

## CHAPTER THREE

### PROCUREMENT CODE

#### 3.0 PURPOSE

The purpose of the Osceola County Procurement Code is to simplify, clarify, centralize, and modernize the policies governing Procurement by the County. It also permits the continued development of comprehensive Procurement Policies and Procedures that provide for increased public confidence in public Procurement. Ensuring the fair and equitable treatment of all persons who do business with the County provides safeguards for maintaining a quality Procurement process. It also provides increased economy in County Procurement activities and maximizes, to the fullest extent practicable, the purchasing value of public monies. Promoting effective broad-based competition within the free enterprise system ensures the County obtains the quality Goods, Services, and Construction as required by the County to better serve its citizens in a cost-effective and timely manner.

#### 3.1 GENERAL PROVISIONS

##### 3.1-1 APPLICABILITY AND EXCLUSIONS

- A. Applicability - The provisions of this Code shall apply to the Procurement of Goods, Services, and Construction by the Board of County Commissioners (Board) and the Departments and agencies under the control of the Board. Expenditures of Federal or State assistance funds and Grants, will be conducted in accordance with the applicable mandatory laws and regulations, which may not be reflected in this Code or may be inconsistent with any provision of this Code. However, nothing in the Administrative Code shall prevent the County from complying with the terms and conditions of any Grant, Contract, gift or bequest that is otherwise consistent with the law.
- B. Exclusions – Not precluding all other requirements of this Code, the following are exempt from the Competitive Solicitation provisions, except as regulated by Ordinance or State Statute as amended, of this Code, but do not prevent the County from competitive selection:
1. Artistic Services.
  2. Academic Program reviews.
  3. Advertisements.
  4. Auditing Services.
  5. Commodities or Services provided or awarded by other governmental agencies including, but not limited to: federal, states, counties, cities, school boards, community colleges, and state university systems.
  6. Communications.
  7. Continuing education events or programs that are offered to the general public and for which fees have been collected that pay all expenses associated with the event or program.
  8. Dues, memberships, and subscriptions.
  9. Emergency Purchases.
  10. Employment Services

11. Family placement services.
12. Financial services.
13. Goods and/or Services given to or accepted by the County via Grant, gift or bequest.
14. Grant Services – Grant opportunity, research, application development, reporting and monitoring.
15. GSA Contracted vendors – purchases made directly from vendors awarded a GSA Schedule Contract at prices equal to the vendor’s current GSA price.
16. Medical or health Services, including services mandated through the court system, involving examinations, diagnosis, treatment, prevention, medical consultation, counseling and outside providers administering the program, including but not limited to, substance abuse and mental health Services.
17. Insurance.
18. Lectures.
19. Legal Services, including attorneys, paralegals, expert witnesses, interpreters, translation services, mediators, appraisal services, real estate title services, and court reporters.
20. Material from publishers and copyright holders.
21. Medicaid services delivered to an eligible Medicaid recipient unless the agency is directed otherwise by law.
22. Pharmaceuticals – Medicinal drugs.
23. Prevention services related to mental health, including drug abuse prevention programs, child abuse prevention programs, and shelters for runaways, operated by not-for-profit corporations.
24. Public Notices.
25. Real Property - Acquisition of Real Property Interests and/or development mitigation credits.
26. Section 8 Program Voucher awards.
27. Section 8 Program Landlord Housing Assistance Payment (HAP) Contracts.
28. Services or commodities exempted by Florida Statutes.
29. Services or commodities provided by Non-Profit organizations.
30. Services or commodities which are Direct Payments as listed in this Code.
31. Sole Source Goods or Services.
32. Software license/subscription renewal, software annual maintenance, and software support costs.
33. Sponsorships.
34. Standardized equipment, annual maintenance repairs and support costs.
35. Used or pre-owned equipment.
36. Utilities.
37. Warehouse Stores – Purchases from paid membership retailers.
38. Workshop and seminar registration, attendance, training, strategic planning and/or costs of job-related travel.
39. Lobbying Services.

### 3.1-2 WAIVER OF REQUIREMENTS

The Osceola County Board of County Commissioners may, when deemed to be in the best interest of the County and not inconsistent with law, waive any or all requirements or provisions set forth in this Chapter of the Administrative Code and proceed thereafter to take whatever action is deemed to be in the best interest of the County.

### 3.1-3 CHANGES IN LAWS AND REGULATIONS

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with this Code, automatically supersede this Code.

### 3.1-4 REQUIREMENT OF GOOD FAITH

This Code requires all parties involved in the Solicitation, Negotiation, performance, or administration of County Contracts to act in good faith.

### 3.1-5 CONFIDENTIAL INFORMATION

Confidential information shall be administered in accordance with the Public Records Act, Chapter 119, Florida Statutes, as amended. Such information furnished by a Bidder or Respondent shall not be disclosed by the County outside of the Procurement Services Office and appropriate staff as determined by the Procurement Services Office without prior written consent by the Bidder or Respondent. All other information submitted by a Bidder or Respondent shall be subject to public records right of access requirements as stated in Chapter 119, Florida Statutes.

## 3.2 AUTHORITY

### 3.2-1 BOARD OF COUNTY COMMISSIONERS

Florida Statutes Chapter 125 and the Charter of Osceola County grant authority to the Board of County Commissioners of Osceola County, Florida to enact the provisions of this Code.

- A. The Board has the right to award all Contracts except as otherwise provided in this Code. All agreements and Contract awards exceeding one hundred thousand dollars (\$100,000.00) per year shall be approved by the Board prior to execution, unless otherwise provided by Board action. Said Threshold amount shall be established based on an annual not-to-exceed amount of \$100,000 per contract year, not to exceed three hundred thousand dollars (\$300,000.00), including all renewals.
- B. The Board shall approve any Amendments and/or renewals to a Contract originally executed by the County Manager, Commission Auditor, or Designees, which would increase the not to exceed amount of the Contract above the approved Threshold limitation as identified in 3.2-1(A). However, once approved by the Board, the County Manager, or Designee, shall have authority to execute 1) agreement renewals which do not increase the annual not to exceed amount and 2) Contract Amendments which do not increase the not to exceed amount of the Contract or the scope of services as approved by the Board.

### 3.2-2 COUNTY MANAGER

In accordance with Chapter One of the Administrative Code (1.2), the County Manager is responsible for the day-to-day administration of the County and to administer and carry out the policies of the Board.

- A. The County Manager or Designee shall have the authority to award and execute purchases, Contracts and/or Amendments that do not exceed the authorized threshold as established

above. This limitation shall be established based on the Threshold limitation established in 3.2-1(A) amount during the term of the Contract.

- B. The County Manager or Designee shall have authority to approve and execute Task Authorizations for continuing Service Contracts that do not increase the entire compensation amount of agreements as authorized and approved by the Board. Specific limitations to County Manager authority, and/or delegation of authority, to approve and execute Task Authorizations may be included in Agenda Requests and/or Agreements approved by the Board, when applicable.
- C. Reporting Requirements - The County Manager or Designee shall, not less than once a month, report to the Board on various Procurement activities either as an informational item on the agenda or via electronic communication. The report will set forth all Contracts, Task Orders, and/or Amendments approved and executed by the County Manager or Designees.  
  
Additionally, it will include all Board approved Contracts that may be renewed within the next six months. Board approval is not necessary and failure to notify alone will not be grounds for a protest of any kind.
- D. The County Manager or Designee shall have the authority to adopt operational procedures, consistent with this Code, Florida Statutes and best practices governing the Procurement and management of all Goods, Services, and Construction by the County.
- E. The County Manager shall have the authority to delegate Procurement authority, in writing, and to designate Procurement Thresholds for amounts less than the Board approval amount.

### 3.2-3 COUNTY ATTORNEY

In accordance with Chapter 1.3, the County Attorney or Designee serves as legal counsel and represents the Board and County departments, including Procurement.

- A. All Contract, Agreement and Amendment templates, including terms and conditions, shall be reviewed by the County Attorney for legal sufficiency.
- B. The Board, County Manager or Designee may request individual legal review and approval of specific Agreements, Contracts, and/or Amendments, or other Procurement related documents on a case-by-case basis.
- C. The County Attorney or Designee shall have the authority to award and execute Purchases, Contracts and/or Amendments for outside legal counsel without a threshold limitation

### 3.2-4 COMMISSION AUDITOR

Chapter 1.4 of the Administrative Code establishes the Commission Auditor provides independent and objective evaluation of the effectiveness of risk management, control and the governance processes.

- A. The Commission Auditor or Designee shall provide necessary auditing services concerning Procurement matters, other than those which they have awarded and executed, and issues to the Board and the County Manager or Designee.
- B. The Commission Auditor or Designee shall have the authority to award and execute purchases, Contracts and/or Amendments for outside auditing services that do not exceed the Threshold limitation established in accordance with Section 3.2-1(A).
- C. Reporting Requirements - The Commission Auditor or Designee shall, not less than once a month, report to the Board on various Auditor's procurement activities either as an informational item on the agenda or via electronic communication. The report will set forth all Contracts, Task Orders, and/or Amendments approved and executed by the Commission Auditor or Designee(s).

### 3.2-5 PROCUREMENT SERVICES DIRECTOR

The Procurement Services Director shall, except for the County Attorney or Commission Auditor:

- A. Supervise the Procurement of all Goods, Services, and Construction required by the County.
- B. Execute and issue, via mail, email or fax, all, except for the County Attorney or Commission Auditor, regular and electronic Purchase Orders, for Goods, Services and Construction, including Owner Direct Purchases, that are associated with Agreements, Contracts, Task Orders, Amendments, County Manager Approval forms, County Attorney Approval forms, Commission Auditor Approval forms, Agenda Items and/or Change Orders approved and/or executed by the Board, County Manager, County Attorney, Commission Auditor and/or Designee(s).
- C. Manage the County's Procurement Card (P-Card) Program.
- D. Assist the County Manager in the development, implementation and administration of Procurement Procedures and processes in the best interest of the County and in accordance with this Code, State Statutes, best practices and any other applicable laws.

### 3.3 ETHICS IN PUBLIC CONTRACTING

#### 3.3-1 STANDARDS OF CONDUCT

Public employment is a public trust. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental Procurement by responsible Contractors. Employees should conduct themselves in such a manner as to foster public confidence in the integrity of the County's Procurement process.

Failure of a County employee to adhere to this Code or the Procurement procedures as established by the County Manager shall constitute insubordination and shall subject that employee to disciplinary action pursuant to Chapter 2 Personnel Policies and Procedures, of the Administrative Code.

#### 3.3-2 CONFLICT OF INTEREST

- A. Bidders, Respondents, members of an Evaluation Committee, Vendors, awarded Contractors, and County employees shall not engage in any action that would create a Conflict of Interest in the performance, or possible performance, of their obligation with the County or would violate, or cause others to violate, the applicable provisions of the Florida Statutes and federal laws relating to ethics in government.

No Procurement of Goods, Services, or Construction in which a Conflict of Interest occurs between the County and the Vendor shall be made with any Person. A Conflict of Interest with a Respondent, Contractor, Vendor, Subcontractor or Person may occur under the following situations:

1. An employee of Osceola County or an individual chosen by the County to serve as a member of an Evaluation Committee has a Material Interest as defined in the Florida Statutes.
  2. A member of the Board, the County Manager, or a spouse, or child thereof, has an employment relationship or a material or financial interest, as defined in the Florida Statutes, upon award of a solicitation.
- B. No public officer or employee of the County shall solicit or accept anything of value including a gift, loan, reward, promise of future employment, favor or service based upon the understanding that a Procurement recommendation or decision would be thereby influenced.
  - C. In addition to the prohibitions concerning gifts and gratuities as stated in Sections 112.313(2) and 112.3148, Florida Statutes, employees within the Procurement Services Office shall not accept any gift from a Lobbyist, as that term is defined in Section 112.3148(2) (b), Florida Statutes, regardless of the dollar value.
  - D. It shall be unethical for any payment, gratuity, or offer of employment to be made by, or on behalf of, a potential Vendor, Bidder, Contractor, or Subcontractor, to any Person associated with a particular Solicitation or award as an inducement for the award.
  - E. Any violation of any provision of this section shall be subject to the sanctions contained in the Florida Statutes Chapter 112 and/or any other applicable state or federal law.

### 3.3-3 LOBBYING

- A. The Lobbying Black-Out Period commences upon the issuance of the Solicitation document.
- B. The Lobbying Black-Out Period for awards requiring Board approval concludes at the beginning of the meeting at which the Board will be presented the award(s) for approval or a request to provide authorization to negotiate a Contract(s). However, if the Board refers the item back to the County Manager for further review or otherwise does not take action on the item, the Lobbying Black-Out Period will be reinstated until such time as the Board meets to consider the item for action.
- C. The Lobbying Black-Out Period for awards requiring County Manager Approval concludes upon issuance of a Notice of Intent to Award.
- D. Bidders, Respondents, potential Vendors, service providers, Lobbyists, Consultants, or

Vendor representatives shall not contact any Board member, the County Manager, any requesting or evaluating Department/Division/Office personnel, and/or any member of the Evaluation Committee concerning an active Solicitation during the Lobbying Black- Out Period.

- E. All questions and inquiries concerning procedural matters shall be directed to the Procurement Services Office.
- F. Except in response to communications initiated by authorized County representatives, contact or communications by Bidders or Respondents to any Board member, the County Manager, any requesting or evaluating County personnel, or any member of the Evaluation Committee, initiated during the Black-Out Period, may result in disqualification from the Solicitation process.

### 3.3-4 PROHIBITION AGAINST CONTINGENT FEES

Contractors and Vendors wanting to do business with the County must not hire a Person to solicit or secure a Contract for a commission, percentage, brokerage, or contingent fee.

### 3.3-5 SPECIFICATION PREPARATION

No Person preparing Solicitation Specifications including, but not limited to, architects, engineers, designers, and Consultants for public Contracts, or Subcontractors shall be able to respond to the Solicitation or receive any direct or indirect benefit from the utilization of such Specifications with the exception of contracted Design/Builds firms.

### 3.3-6 UNAUTHORIZED PURCHASES

- A. No unauthorized purchases shall be allowed.
- B. No County employee shall make any Procurement in the name of the County for personal use.
- C. No County employee shall obligate the funds of the County, except in the case of emergency Procurements, authorized Procurement card (P-Card) transactions, and/or Direct Payment requests handled through the Office of the Comptroller of Osceola County, unless duly authorized by the Board or County Manager, as applicable.
- D. Every Purchase Requisition or Contract shall be properly financed and budgeted prior to the issuance of a Purchase Order by the Procurement Services Office. The Board of County Commissioners may provide exceptions to this requirement.
- E. Dividing or breaking up Procurements into two (2) or more small purchases to avoid or to circumvent the required competition, authorized limits, or approval process is expressly prohibited.

## 3.4 PROCUREMENT ADMINISTRATION

Procurement Services shall serve as the central Procurement office of the County. Operational procedures shall be approved in advance by the County Manager or Designee.

### 3.4-1 PROCUREMENT METHODS AND SOLICITATION

All Contracts shall be awarded by one of the approved methods of source selection as specified in this Code or in the Florida Statutes. The Procurement Services Office has the authority to determine the Source Selection method provided the Procedures established by the County Manager or Designee are followed.

- A. Procurement of Construction Services - The County Manager, or Designee, shall have the discretion to select the appropriate delivery method for a Construction project. In determining which method to use, consideration shall be given to the County's requirements and resources. Contracts for Construction Services shall be procured in accordance with Florida Statutes and/or applicable funding requirements and pursuant to County Policies and Procedures established by the Board and County Manager, or Designee.
- B. Public Notice - Public Notice of each formal Solicitation shall be advertised and/or posted and electronically noticed and shall state the place, date, and time that Bids or proposals must be received.
- C. Pre-Qualification - A pre-qualification process may be conducted by the Procurement Services Office prior to the issuance of a Solicitation in order to establish a list of qualified Bidders or Respondents.
- D. Formal Solicitations – Unless exempt, all County Procurement of Goods, Services and Construction in amounts equal to or greater than the formal Solicitation Threshold shall be conducted using Formal Solicitation Procedures, both as established by the County Manager and in accordance with any applicable State Statutes, as amended. The procedures will identify different methods, under what conditions a specific method should be utilized and the process necessary to achieve a fair and equitable solicitation. The County may require Respondents to provide presentations to an Employee Committee, County Manager and/or Board during the selection process as stated in the Solicitation document. All Respondents selected for presentation shall be accorded fair and equal treatment.  
  
Competitive Sealed Bids/Proposals must be received in the location stated in the Solicitation document no later than the precise date and time set for the Opening of Bids or Proposals to be considered Responsive. A Bid or Proposal received after the time set for Bid Opening is a late Bid and will not be considered for award. Those received prior to the time set for Bid Opening shall be opened publicly and recorded by the County in the presence of one or more witnesses at the time and place designated in the Solicitation document or as soon as practical thereafter.
- E. Small Purchases - Small purchases for securing Goods and Services that do not exceed the Formal Solicitation Threshold are conducted using informal procedures as established by the County Manager.
- F. Cooperative Purchasing - The County may participate in, sponsor, conduct or administer a Solicitation for the Procurement of any Goods, Services, or Construction with one or more eligible governmental agencies, in accordance with an agreement entered into between the participants. The County is authorized to enter into intergovernmental cooperative purchases, sometimes referred to as "piggybacking" in which the County will be extended

the pricing and terms of a competitively solicited active Contract of another governmental entity. When in the best interest of the County, a Cooperative Purchasing agreement will be executed.

- G. Single Source Procurement - A Contract may be awarded without competition when the Procurement Services Director determines, in writing, after conducting a good faith review of available sources and reviewing all applicable documentation, that there is only one source for the required Goods, Services, or Construction.
- H. Emergency Procurements - Notwithstanding any other provisions of this Code, the County Manager, or Designee, may make or authorize others to make Emergency Procurements of Goods, Services, or Construction when there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with source selection methods contrary to the public interest. This stipulation is provided that such Emergency Procurements shall be made utilizing any existing contracts or whatever competition as is practicable under the circumstances.

A written determination of the basis for the emergency and for the selection of the particular Vendor shall be maintained by the Procurement Services Office as a public record in the Procurement file. Procurement Services will include any Emergency Procurements in the monthly report to the Board.

In the event an official state of emergency has been declared by the Board, the County Manager, or Designee, is expressly authorized to execute Contracts with the State of Florida, FEMA and/or other applicable emergency relief entities on behalf of the County in order to accomplish all necessary relief efforts, provided that the requirements of this section have been met.

- I. Owner Direct Purchase Program - When a Construction project is proposed, the Procurement Services Office, in conjunction with the End User Department, will determine, prior to the Solicitation process, whether the Owner Direct Purchase Program will be utilized for that particular project. The County may, if not prohibited by law, exercise a right to purchase directly various Materials, Goods, and/or equipment to be used in the Construction project pursuant to Florida Statute 212.08(6), as amended.

The Procurement Services Director is authorized to execute Owner Direct Purchase Program Purchase Orders if the associated Contract approved by the Board or County Manager includes clauses allowing the Owner Direct Purchase Program. Nothing herein shall prohibit the County from deleting items within the Solicitation and purchasing said items directly from a supplier, without further Bidding, in an effort to benefit from the County's tax exempt status, in accordance with the proper authorization.

- J. Procurement Card (P-Card) Program - The County recognizes that certain Procurements are more efficiently processed via a P-Card Program. The program shall include the establishment, communication, and maintenance of procedures for the use and control of the utilization of a P-Card to purchase Goods and Services on behalf of the County. P-Cards may only be used for authorized purposes. The single transaction limit shall be established by the County Manager, or Designee. The P-Card controlled by the Comptroller's Office for Accounts Payable will be exempt from the single transaction limit

as approved by the County Manager.

K. Direct Payments – Unless controlled by an applicable agreement, Direct Payments may be permitted when there is legal authorization to expend the funds, there is no additional value in processing via Purchase Order, and is in accordance with approved procedures. Direct Payments may be processed electronically or through a check. Examples include, but are not limited to, the following Procurements:

1. Dues, memberships and subscriptions;
2. Tuition;
3. Utilities;
4. Governmental agency fees;
5. Insurance;
6. Postage;
7. Petty cash reimbursements;
8. Debt Service Payments;
9. Sponsorships;
10. Refunds;
11. Check Request/Reimbursement;
12. Legal Services;
13. Grant Disbursements;
14. Software License/Subscription Renewal/Maintenance fees.

### 3.4-2 BID/PROPOSAL ACCEPTANCE AND EVALUATION

- A. Opening - Competitive Sealed Bids/Proposals received in the location stated in the Solicitation document no later than the precise date and time set for the Opening shall be accepted without alteration or correction. The County reserves the right to accept any or all Bids/Proposals or to waive any formalities, technicalities or irregularities.
- B. Evaluation - Bids/Proposals shall be evaluated based on the requirements set forth in the Solicitation document. No criteria may be used in evaluation that is not set forth in the Solicitation document. With the exception of solicitations procured pursuant to 287.055 F.S. (CCNA), Evaluation of Bids shall include consideration of the total cost for each year of the Contract, including renewal years, as submitted by the Vendor.
- C. Rejection - The County reserves the right to reject any or all Bids/Proposals. This includes the right to reject the Bids/Proposals of any respondent due to the following:
1. Previously failed to perform properly, or to complete on time a Contract of a similar nature;
  2. Failed to establish they are in a position to perform the Contract; and/or
  3. Habitually, and without just cause, neglected the payment of bills or otherwise disregarded its obligations to Subcontractors or employees.
- D. Correction or Withdrawal of Bids - After Bid Opening, no changes in Bid prices or other Bid provisions shall be permitted. In the event of mathematical mistakes in extended pricing, the unit price shall prevail. Mistakes discovered before Opening may be modified or withdrawn via written notice from the Bidder if received in the Procurement Services Office prior to the time set for Bid Opening, as deemed appropriate by the Procurement Services Director.

- E. Exceeding Allocated Funds - In some circumstances the lowest acceptable Bid for a project exceeds allocated/budgeted funds; however, the projects' scope, time or economic considerations precludes the re-Solicitation of work of a reduced scope. If such Bid does not exceed the allocation by more than ten percent (10%), the Procurement Services Director and the End User Department are authorized, to negotiate an adjustment of the Bid price with the lowest Responsive and Responsible Bidder so long as the adjusted Bid price does not exceed allocated funds and the County Manager, or Designee, has approved such adjustment.
- F. Tie Bids - If there are two (2) or more Bid submittals that are identical in price and meet all the requirements and criteria set forth in the Solicitation, the award may be made by the Board or County Manager pursuant to the approval limitations as stated in this Code. In making the tie-breaker decision, the following may be considered, including but not limited to: Service Disabled Veteran's Business Enterprise (SDVBE) status, Minority/Women Business Enterprise (M/WBE) status, Bidder's location, and/or the Bidder's Local Small Business Enterprise status.

### 3.4-3 RESPONSIBILITY OF BIDDERS AND RESPONDENTS

- A. Factors to be considered in determining if a Bidder is Responsible may include, but is not limited to, any or all of the following:
  1. The Bidder's financial condition, physical capacity, professional ability, personnel, or other resources, including the ability to furnish Subcontractors possessing the same qualifications as the Bidder;
  2. The Bidder's performance record;
  3. Whether the Bidder has successfully paid the fees, taxes, or assessments owed to the County; and/or
  4. Whether the Bidder provided all required information concerning its responsibility.
- B. Determination of Non-Responsibility - If a Bidder or Respondent, who otherwise could have been awarded a Contract, is found Non-responsible, a written finding of Non-responsibility, setting forth the basis of the finding, shall be prepared by the Procurement Services Office. The written finding shall be maintained as part of the County's Procurement file.
- C. Right to Inspect - The County may inspect the plant or place of Business of, or equipment to be utilized by a proposed Bidder or Respondent or any Subcontractor of an awarded Contract or a Contract to be awarded by the County to assist in determination of Bidder/Respondent responsibility.
- D. Establishment of Specific Criteria - The Procurement Services Office may establish specific criteria to determine the responsibility of a Bidder or Respondent, relative to a particular Procurement, with said criteria set forth in the Solicitation.
- E. Electronic Signatures – The County will accept electronic signatures on documents submitted to it electronically when in the County's best interest.

### 3.4-4 BONDS AND SECURITY REQUIREMENTS

- A. Bid Security - The County may require the submission of a Bid bond or other form of security to guarantee full Bid compliance. When the Solicitation requires a Bid bond or security, failure of the Bidder to supply same, in the amount and type required, shall automatically render the Bidder as Non-responsive to the requirements of the Solicitation.
- B. Contract Payment and Performance Bonds - When a Contract is awarded the County may require the successful Bidder to supply a payment and performance bond as required by State Statute. When a payment and performance bond is required, it shall be in the amount and type satisfactory to the County and executed by a surety company authorized to do business in Florida that is acceptable to the County.

The bonds shall be recorded in the public records of the County, be held by the Clerk of the Board, and shall become binding on the parties upon the execution of the Contract. In lieu of a payment and performance bond, the County may accept cash, money order, certified check, cashier's check, or irrevocable letter of credit. Nothing in this section shall be construed to limit the authority of the Board, the County Manager, or the Procurement Services Director to require other security in addition to, or in lieu of, those bonds or in circumstances other than those specified in this Code, when in the best interest of the County.

### 3. 4-5 C A N C E L L A T I O N OR REJECTION OF SOLICITATIONS

Solicitations may be cancelled, or any or all submittals in response to Solicitations issued by the County may be rejected by the County Manager or Designee, in whole or in part, without recourse, when it is in the best interest of the County. The County will provide said determination in writing, and identify the reason(s) that such action is in the County's best interest. Notice shall be publicly posted in the Procurement Services Office and on the County's website, and sent to all known Solicitation document holders or Bidders/Respondents.

### 3.5 PROTEST AND APPEALS

It is essential that Bidders, Vendors, Contractors and the citizens of Osceola County have confidence in the policies and procedures for soliciting and awarding Contracts. The County has adopted herein the policy for the protest of a Solicitation, award or related Procurement decision.

#### 3.5-1 NOTICE OF PROTEST

- A. Notice of Intent to Award - The Procurement Services Office shall post a Notice of Intent to Award at the Procurement Services Office for a period of at least three (3) business days after the Notice is issued. The Notice of Intent to Award shall also be posted on the County Bid notification site. A Notice of Intent is not issued for certain qualification based solicitations such as those procured pursuant to 287.055 F.S. (CCNA).
- B. Notice of Protest -
  - 1. Notice of Solicitation Protest - Any prospective Bidder or Respondent may file a Notice of Solicitation Protest concerning a Solicitation in writing to the

Procurement Services Director. The protest must be received in the Procurement Services Office at least three (3) business days prior to the due date for the Solicitation.

2. Notice of Award Protest - Any Bidder or Respondent, who is not the intended awardee and who claims to be the rightful awardee, may file a Notice of Award Protest, in writing, with the Procurement Services Office, by 5:00 pm on the third (3<sup>rd</sup>) business day after the Notice of Intent to Award is posted. An Award Protest is not valid if filed by a Bidder who cannot show they would be awarded the Contract if their protest is upheld.
3. Failure to file a Notice of Protest in a timely manner shall constitute a waiver of rights hereunder.
4. The Procurement Services Director shall notify the County Manager and the County Attorney of receipt of a Notice of Protest.
5. The Procurement Services Director will determine if the Notice of Protest was filed in a timely manner and if the protestor meets the criteria of this section. The protestor will be notified in writing whether or not the Notice of Protest meets the requirements of this Code.
6. The Procurement Services Director, with the approval of the County Manager, may require the posting of a protest bond, made payable to the Osceola County.

### 3.5-2 FORMAL WRITTEN PROTEST

After a Notice of Protest has been filed in a timely manner, a formal written protest must be filed within five (5) business days of the filing of the Notice of Protest. Failure to file a Formal Written Protest in a timely manner shall constitute a waiver of rights hereunder. The alleged basis for the protest shall be limited to the following:

- A. Solicitation Protests -
  1. The County failed to follow the procedures or requirements specified in the Solicitation document; and/or
  2. A County employee engaged in misconduct or impropriety concerning the Solicitation; and/or
  3. The terms of the Solicitation are in violation of or contradicts applicable laws, regulations, rules, code, policies or other legal authorities governing the Solicitation; and/or
  4. Solicitation document instructions are unclear or contradictory.
- B. Award Protest -
  1. The County failed to follow the procedures or requirements specified in the Solicitation document; and/or
  2. County employees or Evaluation Committee member(s) engaged in misconduct or impropriety; and/or
  3. The County made an identifiable mathematical or other errors in evaluating proposals, resulting in the proposal receiving an incorrect score and not being selected for award; and/or
  4. The County's designation of the protesting party as Non-responsive was incorrect due to an issue of fact or law not apparent on the face of the Bid or proposal document.

C. Content of Protest - The formal written protest shall state all grounds claimed for the

protest and include supporting documentation. Failure to do so shall be deemed a waiver of all protest rights. The protest shall include, at a minimum, the following information:

1. Names, addresses and telephone numbers of the parties protesting.
2. The Solicitation number and project title.
3. A concise statement of the facts and the basis for the protest.
4. Reference to the rules, regulations, code, ordinances, policies or other legal authorities that have been violated or entitle the parties to the relief requested.
5. Supporting evidence or documents to substantiate any arguments.
6. The form of relief requested.

### 3.5-3 STAY OF PROCUREMENT DURING THE PROTEST

The County Manager shall decide whether the performance of the Contract should be stayed. If the Procurement Services Director, with the approval of the County Manager, makes a written determination within five (5) days of the Filing of the Formal Written Protest that the protest is clearly without merit and/or that a delay in the performance of the Contract is not necessary to protect the substantial interest of the County, the Procurement Services Office may proceed with commencement of performance of the Contract.

### 3.5-4 REVIEW OF PROTEST AND DETERMINATION

The Procurement Services Director shall consider the timeliness of the Formal Written Protest and notify the protestor of its timeliness within seven (7) Business Days following receipt of the Formal Written Protest. The Procurement Services Director will make any pertinent inquiries, and shall have the opportunity to begin to resolve the protest by mutual agreement between the parties. The Procurement Services Director shall confer with the County Attorney and County Manager or designee to review the basis for the protest and the results of the inquiries and concur on a determination. The Procurement Service Director will send the protestor a Notice of Determination within five (5) Business Days of the County's determination.

### 3.5-5 APPEALS

- A. If the protestor is not satisfied with the determination, the protestor may appeal to the Board by filing a Notice of Appeal, which sets forth the facts upon which the appeal is based and includes any and all supporting documentation, with the Procurement Services Director within five (5) Business Days of issuance of the Notice of Determination.
- B. The Procurement Services Director shall notify receipt of a Notice of Appeal and provide copies to the County Manager and the County Attorney.
- C. The Procurement Services Office shall prepare an agenda item for the Board and schedule an Appeal hearing before the Board within thirty (30) days of Receipt of the Notice of Appeal or as soon as practicable.
- D. Failure to file a Notice of Appeal in a timely manner shall constitute a waiver of rights hereunder.
- E. The decision of the Board shall be final and conclusive.

### 3.5-6 STAY OF PROCUREMENT DURING APPEAL

If an Appeal is filed and performance of the Contract was stayed by the County Manager pursuant to this section, the filing of an Appeal shall automatically continue the stay. The exception would

be if the County Manager makes a written determination that Contract performance without delay is necessary to protect the substantial interest of the County or the health, welfare, and/or public safety of the citizens of Osceola County.

### 3.6 CONTRACTS

#### 3.6-1 TERMS AND CONDITIONS

Any type of Contract which promotes the best interest of the County, and has been approved for legal sufficiency by the County Attorney, may be used. All County Contracts shall include provisions necessary to define the responsibilities and rights of the parties to the Contract. The Procurement Services Director shall have the authority to establish and modify any such terms and conditions subject to review by the County Attorney for legal sufficiency and approved by the County Manager and/or Board of County Commissioners.

#### 3.6-2 MULTI-YEAR CONTRACTS AND APPROPRIATION OF FUNDS

A Contract for Goods, Services, or Construction may be entered into for more than one (1) fiscal year if it is deemed to be in the best interest of the County, if the term of the Contract and conditions of renewal or extension are included in the Solicitation, and funds are available for the current fiscal Year. Obligations for succeeding fiscal years may be subject to the availability and appropriation of funds by the Board.

#### 3.6-3 ADMINISTRATION AND COMPLIANCE

- A. After a contract has been awarded, the County will conduct Contract administration and compliance activities. This encompasses all interaction between the County and the Vendor from the time the Contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved.
- B. The End User Department's Project Manager is responsible for the Contract administration and compliance functions to ensure compliance with the contract, County Administrative Code, Florida Statutes, as applicable, County Procedures and other applicable requirements.
- C. Right to Audit Records - The County may, at reasonable times and places, audit the books, records, and accounts of any Person, to the extent that the books, records, and accounts relate to the performance of Services in accordance with a County Contract. Any Person that is awarded a Contract or granted a Contract Amendment shall maintain all books, records, and accounts in compliance with generally accepted accounting procedures; and shall retain all books, records, and accounts for three (3) years, or a longer term as required by the funding source and designated in the Solicitation and Contract documents, from the date of final payment, termination, or until a full County audit is complete, whichever comes last. All books, records, and accounts related to the performance of a County

Contract shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes, as amended.

- D. Settlement of a Contract Dispute - The Procurement Services Director, with the concurrence of the County Manager and review by the County Attorney, is authorized to settle disputes arising out of the performance of a County Contract, provided the settlement amount does not cause the total Contract amount, including the settlement amount, to exceed the authority of the County Manager as established in this Code. Any settlement exceeding the authority of the County Manager must be approved by the Board.

If it is determined that termination is in the best interest of the County, the Procurement Services Office shall present a proposed letter of termination for Board or County Manager approval, pursuant to original agreement approval.

### 3.7 SUSPENSION AND DEBARMENT

#### 3.7-1 AUTHORITY TO DEBAR OR TEMPORARILY SUSPEND

- A. The Board has the authority to Debar a Person or Business, for cause, from doing business with the County.
- B. The County Manager has the authority to Suspend a Person or Business from doing business with the County during an investigation and pendency of Debarment action.
- C. The Debarment shall be for a period not to exceed three (3) years from the date of the final Debarment determination by the Board. However, if the Debarment is based solely upon a previous Debarment by another governmental agency, the period of Debarment may run concurrently with the period established by that other agency.
- D. The Temporary Suspension shall be for a period not to exceed six (6) months from the date of the final Suspension determination by the County Manager.

#### 3.7-2 CAUSES FOR DEBARMENT

- A. Conviction of any Person, under any statute of the federal government, this state, or any other state, 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 Contractor/Vendor within the last 36 months.
- B. Conviction for commission of a criminal offense as an incident to obtaining, or attempting to obtain, a public or private Contract or sub-Contract, or in the performance of such Contract or sub-Contract within the last 36 months.
- C. Conviction of or civil judgment against any Person based on a violation of a state or federal antitrust statute, relating to a response to a Solicitation within the last 36 months.
- D. Violations of Contract provisions within three (3) years of current Debarment action, of a character which are reasonably deemed to be so serious as to justify the current Debarment or Suspension action.

- E. Abandonment of a Contract.
- F. Knowing failure, without good cause, to perform in accordance with the terms and conditions as stated in an awarded Contract.
- G. Failure to perform or unsatisfactory performance of any of the terms of a Contract with the County. However, failure to perform or unsatisfactory performance caused by acts beyond the control of the Person shall not be considered to be a basis for Debarment or Suspension.
- H. Failure to pay a Contractor, Subcontractor, or Materials provider as required.
- I. A determination by a court, the Florida Department of Business and Professional Regulation or the Federal Government that the Person has violated the provisions of any Florida Statute, Federal Regulation or local law and/or has been placed on the State of Florida or Federal Government list of Debarred Contractors. and/or
- J. Any other cause that the Board reasonably considers to be as serious and compelling enough to support a determination for of Debarment.

### 3.7-3 INITIATION OF DEBARMENT, TEMPORARY SUSPENSION AND FINAL DETERMINATION

- A. The County Procurement Services Office shall investigate any information received concerning a possible cause for Debarment.
- B. The County Manager may determine that the Person shall be temporarily Suspended from doing business with the County during the investigation, and pendency of a Debarment action.
- C. In the event of temporary Suspension by the County Manager, the Procurement Services Office shall provide written notification to the Person, regarding the temporary Suspension, by certified mail, return receipt requested or by any other method that provides evidence of Receipt, to the address provided to the Procurement Services Office by the Person. The notice of Suspension shall state:
  - 1. The basis for the investigation;
  - 2. That no Solicitation response shall be accepted from the Person and, if received, will not be considered during the temporary Suspension period; and
  - 3. The date and time that the final Debarment determination hearing will be held in front of the Board.
- D. The basis and documentation for the Debarment of a Person shall be reviewed by the County Manager.
- E. If the County Manager determines that there is no reasonable basis for a cause for Debarment, he/she may reinstate the Suspended Person.
- F. If the County Manager determines that there exists a reasonable basis for a cause for further Debarment actions, the County Manager, after review by the County Attorney, shall request a hearing before the Board for a final determination regarding Debarment.

G. If the Board determines that a Person should be Debarred, the Procurement Services Office shall provide written notification to the Person, regarding the Debarment, by certified mail, return receipt requested or by any other method that provides evidence of Receipt, to the address provided to the Procurement Department by the Person. The notice of Debarment shall state:

1. The basis for the Debarment;
2. That any current Contract with the County shall be terminated per the conditions in the Contract;
3. That no Solicitation response shall be accepted from the Person and, if received, will not be considered during the Debarment period; and
4. The period of Debarment, including the specific date that the Debarment ends.

#### 3.7-4 IMPUTED KNOWLEDGE

- A. Improper conduct by a Person may be imputed to an Affiliate for purposes of Debarment where the impropriety occurred in connection with the Affiliate's duties for, or on behalf of, and/or with the knowledge or approval of the Person.
- B. The improper conduct of a Person or its Affiliate having a current County Contract with a Contractor/Vendor may be imputed to the Contractor/Vendor for purposes of Debarment where the impropriety occurred in connection with the Person/Affiliate's duties for, or on behalf of, and/or with the knowledge or approval of the Contractor/Vendor.

#### 3.7-5 MASTER LIST OF DEBARRED OR SUSPENDED PERSONS

The Procurement Services Office shall maintain a Master List of Debarments and Suspensions, which will include, at a minimum, the names of those Persons Debarred or Suspended, the basis for such action, the period including expiration date and the name of the Debarring agency, if the County's Debarment is based on Debarment by another governmental entity.

#### 3.8 LOCAL SMALL BUSINESS ENTERPRISE PROGRAM (LSBE)

##### 3.8-1 ENHANCING CONTRACTING OPPORTUNITIES

Osceola County will enhance contracting and Procurement opportunities for small business enterprises headquartered in Osceola County by establishing a Local Small Business Enterprise (LSBE) program. The County Manager shall have the authority to develop and implement procedures for the Local Small Business Enterprise Program that encourages LSBE participation and document good faith efforts that promote participation of LSBE in contracting and sub- contracting opportunities.

An economic development opportunity shall be offered to certified LSBE(s) as defined in the procedures. The opportunity shall be applicable to the request for quotation and Competitive Sealed Bid Solicitation should a certified Osceola County LSBE business respond to a Solicitation and submit a Bid that is within a certain percentage, as specified in approved procedure, of the lowest Bid.

### 3.8-2 PARTICIPATION GOAL

Osceola County has established a goal of twenty-five percent (25%) participation for LSBE and M/WBE for all County Contracts, including sub-contracting opportunities. This goal does not include Contracts where the funding source prohibits local preference, including but not limited to Procurements which are federally funded directly or through other means.

### 3.8-3 EXCEPTIONS

Exceptions to this policy shall include, but are not limited to, the following:

- A. Purchases that are funded in whole or in part by assistance from any federal, state, or local agency that disallows local preference;
- B. Purchases made through cooperative Procurements;
- C. Purchases subject to section 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act, as amended;
- D. Procurements subject to formal proposal where price is not the primary factor and/or is not part of the criterion are not subject to Local Small Business Enterprise program; however, a firm's location may be considered in the evaluation criterion.

### 3.9 MINORITY/WOMEN BUSINESS ENTERPRISES (W/WBE) PROGRAM

#### 3.9-1 ENHANCING CONTRACTING OPPORTUNITIES

Minority/Women Business Enterprises (M/WBE) are encouraged to participate in the Procurement process, and as such the County shall use its best efforts to award Contracts to eligible M/WBE Vendors for all Goods, Services, and Construction. All entities performing work for the County, including Subcontractors, shall take all necessary and reasonable steps to ensure that M/WBEs have the maximum opportunity to participate in the performance of Contracts without discrimination on the basis of race, color, national origin, or sex. The County Manager shall have the authority to develop and implement procedures for the M/WBE Program.

The County's M/WBE program is not intended to promote the use of racial or gender set-asides, and quotas, but is intended to encourage increased participation among minority-owned and women-owned Business enterprises. As such, the County Manager shall have the authority to develop and implement procedures for the MWBE Program.

Whenever the County is considering two (2) or more Bids, proposals, or responses to a Solicitation for the Procurement of Goods, Services, and/or Construction, which are equal with respect to price, quality, and Services, if neither bid is from a certified SDVBE, but one of the bids is received by a certified M/WBE, the County shall award such Procurement or Contract to the M/WBE. Procurement Services will report to the Board annually, by January 31<sup>st</sup>, on the prior calendar year's progress and success along with the current status of the program.

#### 3.9-2 PARTICIPATION GOAL

The County hereby establishes an annual Contract participation goal of twenty-five percent  
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(25%) of Contracts/Subcontracts awarded to M/WBEs and LSBEs. Vendors are encouraged to reflect the County's specific M/WBE annual participation goal of 25% M/WBE participation in subcontracting opportunities. Vendors will still be asked to make good faith positive steps to subcontract with M/WBEs for a share of the work consistent with the goals of the County. However, the County shall consider the availability of M/WBEs in the relevant market, the capacity of the particular M/WBE to complete the job, the past results of efforts to Contract with M/WBEs, and M/WBE firms that indicated they are ready, willing, and able to perform work on County projects.

The goal set forth herein is not a mandatory level, and nothing herein shall be construed as an obligation of the County to achieve the stated percentage level. The goal stated herein shall be examined periodically and adjusted in accordance with a review of the program's success and analysis of the relevant markets.

### 3.10 SERVICE DISABLED VETERAN BUSINESS ENTERPRISE (SDVBE)

PROGRAM It is the intent of the County, by providing opportunities for SDVBES, to address

the economic disadvantage of service-disabled veterans who are statistically least likely to be self-employed, compared to the veteran population as a whole, and who have made extraordinary sacrifices on behalf of the nation, the state, and the public.

Whenever the County is considering two (2) or more Bids, proposals, or responses to a Solicitation for the Procurement of Goods, Services, and/or Construction, which are equal with respect to price, quality, and Services, where at least one (1) response is from a certified SDVBE, the County shall award such Procurement or Contract to the SDVBE. If one (1) or more Businesses are entitled to this preference, then the Business having the smallest net worth or average annual income shall receive the award.

### 3.11 LIVING WAGE INCENTIVES (LWI) AND APPRENTICESHIP PROGRAMS

It is the intent of the County, by providing opportunities to reward existing and/or new employers providing a Living Wage to their employees, to promote a just and sustainable local economy. As a result, Living Wage Certified (LWC) employers are strongly encouraged to participate in the County's solicitation processes. This is further encouraged through incentives.

#### 3.11-1 COST BASED SELECTION.

Whenever the County is considering two (2) or more Bids, proposals, or responses to a Solicitation for the Procurement of Services, which are equal with respect to quality, and Services, where at least one (1) response is from a Living Wage Certified (LWC) employer who is willing to match the lowest bid received, the County shall award such Procurement or Contract to the LWC Bidder. If one (1) or more Bidders are entitled to this incentive, the LWC Bidder having the lowest Bid will be given the first opportunity to match. The aforementioned process will be used progressively as applicable.

#### 3.11-2 QUALIFICATION BASED SELECTION.

Whenever appropriate, the incentive will provide for up to five (5) points for a Living Wage Certified (LWC) vendor as one component of the established evaluation criteria. The solicitation  
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documents will specifically identify the amount of available points. A LWC vendor would then be eligible for the specified points.

### 3.11-3 APPRENTICESHIP OPPORTUNITIES.

During the solicitation of certain Construction Manager at Risk (+\$5 million) services, should a LWC vendor affirm and provide required documentation of a viable apprenticeship program, the County may add up to five (5) points to the evaluation criteria, where not prohibited by law.

## APPENDIX A.

### DEFINITIONS

Unless the context otherwise requires, the following terms shall have the meanings set forth below whenever they appear in Chapter 3 of the Administrative Code and/or correlating County Manager Procedures:

**Addendum:** A written change to an Invitation to Bid (ITB), Request for Quote (RFQ) or Request for Proposal (RFP) during the solicitation process.

**Advertisement:** Public notice in a newspaper of general circulation and or posted on the County's web based bid notification system of formal solicitations; notice should state the place, date and time that bids or proposals must be received.

**Affiliate:** A corporation that is related to another corporation by one owning shares of the other, by common ownership, or by other means of control.

**Agenda Items/Requests:** A written form of communication presented to the Board for consideration. The Agenda Item/Request includes a summary of the requested action along with supporting documentation.

**Agreement:** Written agreement between two or more competent parties that includes provisions necessary to define the responsibilities and rights of the parties to perform a specific act(s); any type of agreement, regardless of what it is called, for the procurement or disposal of goods, services or construction, usually an exchange of goods or services for money or other consideration. The term Agreement may be used interchangeably with the term "Contract" or "Contract Acceptance Letter."

**Amendment/Contract Amendment:** Written modification, which revises specifications, price, quantity, or other terms of the Agreement, upon mutual consent and with a formally executed document signed by both parties.

**Annual Requirement (AR):** All documents, written or electronic whether attached or incorporated by reference, which are used for repetitive purchases of goods and services, where award is made to the lowest bidder or bidders.

**Artistic Services:** The rendering by a Contractor of time and effort to create or perform an artistic work in the fields of music, dance, drama, fold art, creative writing, painting, sculpture, photography, graphics arts, craft arts, industrial design, costume design, fashion design, motion pictures, television, radio or tape and sound recording.

**Best Value:** A technique in the Competitive Solicitation process which permits the evaluation of objective criteria to determine the best overall value and/or return on investment to the County.

**Bid:** A formal written price offer by a Vendor to the County to furnish specific Goods, Services, and/or Construction in response to an Invitation for Bids or a multistep bidding procedure.

**Bid Award:** Award of a bid for goods or services by the appropriate level of authority after receipt of competitive quotes or bids, and determination of fund availability.

**Bid Bond/Security:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

**Bidder:** Any Person, Firm, Business or other group of individuals that submits a response to a Solicitation. The term Bidder may be used interchangeably with the term Respondent.

**Black-Out Period:** The period that begins upon the issuance of a solicitation and concludes upon the final execution of the contract by the appropriate approval authority during which bidders and respondents are prohibited from contacting any Board Member, the County Manager, any requesting or evaluating department personnel and/or any member of the Evaluation Committee.

**Board/BOCC:** The Osceola County Board of County Commissioners.

**Business:** Corporation, firm, association, syndicate, partnership, sole proprietorship, joint stock company, joint venture, or any other legal entity.

**Business Day:** Days of operation that the Osceola County offices are open, except for holidays recognized by the County, during normal operating hours.

**Capital Improvement Project (CIP):** Any public improvement which the County undertakes, including the construction or reconstruction in whole or in part, of any building, road, highway, street improvements, physical plant, structure, or facility.

**Certificate of Contract Completion Acceptance:** A form which indicates that a project has been satisfactorily completed and the contractor has paid all labor, materials and other charges against the project in accordance with the terms of the Contract.

**Certificate of Insurance:** A document which is provided by the contractor/consultant to show proof of insurance according to the requirements stated by the County.

**Change Order:** Modification, deletion or addition to an authorized Purchase Order.

**Commission Auditor/County Attorney Approval (CAA):** Process and form to be utilized when a BOCC Division/Department/Office submits an agreement or request to the County Attorney or Commission Auditor for approval. The form provides a summary of the agreement and or transaction along with authorization / signatures for audit purposes.

**Collusion:** A secret agreement or cooperation between two or more parties to accomplish a fraudulent, deceitful, or unlawful purpose.

**Collusive Bidding:** An unethical and illegal practice in which suppliers act in collusion to “fix” their bids in a collectively advantageous manner.

**Commodity Code:** A system of symbols (alpha, numeric or other) used to represent words to describe a commodity to facilitate data sort capabilities of purchased goods/services for the purpose of analysis.

**Communications:** Services used by the County such as cellular telephone providers, Cable television, and long distance services carriers.

**Competitive Solicitation:** Process of requesting and receiving two or more sealed Bids, proposals, or replies submitted by responsive Vendors in accordance with the terms of a competitive process, regardless of the method of Procurement.

**Conflict of Interest:** A clash between the public interest and the private pecuniary interest of the individual concerned. (Blacks Law Dictionary, 299, 1990). The term identifies those situations where contractors or public officials may obtain a benefit from a public contract. Conflicts of Interest may result in a breach of ethics or an ethical code. Actual or Perceived Conflict of Interest: Any action, decision or recommendation by an agent or public official acting in an official capacity, the effect of which could be to the private pecuniary benefit or detriment of the person or person's relative.

**Construction:** The process of constructing a building, structure, road or drainage utilities; altering, repairing, improving, or demolishing any structure or building; or other improvements of any kind.

**Construction Manager at Risk (CMAR):** A project specific delivery method that provides overall planning, coordination and control of a construction project from beginning to completion for a guaranteed maximum price.

**Construction Services:** All labor, Services, and Materials provided in connection with the Construction, repair, replacement, renovation, or demolition, or any other improvement of any kind, to any real property.

**Consultant:** A Person that possesses unique qualifications which allow them to serve and/or perform specialized and/or advisory Services, usually for a fee.

**Consultants Competitive Negotiation Act (CCNA):** Guidelines for the acquisition of professional architectural, engineering, landscape architecture, or surveying and mapping services, including definitions, procedures and prohibitions as defined in Florida Statute 287.055, as amended.

**Consultant Services:** Any narrow discipline wherein a known practitioner has, through education and experience, developed expert advisory and programmed skills as a vocation; any service performed primarily by vocational personnel which requires the analysis or certification of a professional before the services are acceptable to the user of the service or any other advisory, study or programming activity.

**Consumer Price Index (CPI):** The Consumer Price Index is a measure of the average change in prices over time in a fixed market basket of goods and services. Two CPIs are published: (1) the CPI for All Urban Consumers (CPI-U) which covers about 80% of the total populations, and (2) the CPI for Urban Wage Earners and Clerical Workers (CPI-W) which covers 32% of the total population. The CPI is based upon prices of food, clothing, shelter, transportation, medical care, and other goods and services that people buy for day-to-day living.

**Contract:** Obligation, such as an accepted offer, between competent parties upon a legal consideration, to abstain from or to do some act or acts. The term Contract may be used

interchangeably with Agreement.

**Contract Management:** The management of the organization's contracts and contract-related activities which may include accounting, administration, auditing, grants management, law, negotiation, logistics, price-structure compensation, delegation of purchasing authority, program management, termination and other business activities.

**Contractor:** Any individual, firm, partnership, corporation, association or other legal entity having a Contract with the Board of County Commissioners to furnish Goods, Services, or Construction for an agreed upon price.

**Cooperative Purchasing:** A Procurement conducted by, or on behalf of, more than one public Procurement unit.

**County:** Osceola County, a political subdivision of the State of Florida.

**County Manager:** Chief Executive Officer for the County, who oversees county operations.

**County Manager Approval (CMA):** Process and form to be utilized when a BOCC Division/Department/Office submits an agreement or request for expenditures to the County Manager, or designee, for approval. The form provides a summary of the agreement and or transaction along with authorization / signatures for audit purposes.

**Cure Notice:** A notice, either oral or in writing, that informs the Contractor that he or she is in default and states what the Contractor has to do to correct the deficiency. If the notice is oral, it shall be confirmed in writing.

**Debar/Debarment:** An action taken by the Board under this Code to prohibit a Person of Firm from participating in County Procurements for an extended period of time.

**Department/End User Department/End User/Division/Office:** An administrative Department, Division, or Office of the County which utilizes any Goods, Services, or Construction procured under the Administrative Code and correlating Procedures. The terms may be used interchangeably.

**Department Direct County Manager Approval (DD-CMA):** Process and form to be utilized when a BOCC Division/Department/Office submits an agreement to the County Manager, or designee, for approval without Procurement Services involvement. The form provides a summary of the agreement along with authorization / signatures for audit purposes.

**Design-Build Professional:** Any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice architecture, engineering or land surveying in the State of Florida.

**Design-Build Services:** The requirement for which a single contract with a design-build firm is entered into for the design and construction of a Capital Improvement Construction Project.

**Design Criteria Package:** Concise, performance-oriented drawings or specifications of the public construction project as defined in Florida Statute 287.055.

**Design Criteria Professional:** A firm who holds a current certificate of registration under Effective 10/01/18

Florida Statute 481 to practice architecture or landscape architecture or a firm who holds current certificate as a registered engineer under Florida Statute 471 to practice engineering who is employed by or under contract to the agency as defined in Florida Statute 287.055.

**Designee:** A Person who has been given the authority to act on the behalf of another Person of authority.

**Direct Payment:** The payments the Office of the Comptroller of Osceola County can make directly, without a purchase order, for specific fees, Goods, Services in accordance with the Code and approved procedures.

**Discussion:** Communication between a Bidder or Respondent and the Procurement Services Office for the purpose of: eliminating minor irregularities, informalities, or apparent clerical mistakes in the offer or response; clarifying any offer or response to assure full understanding of, and responsiveness to, Solicitation requirements; resolving minor variations in Contract terms and conditions; and/or establishing the competency or financial stability of any Bidder or Respondent.

**Electronic Signature:** Letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party, with the intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.

**Emergency Procurement:** Procurement that is made in order to minimize a delay in a requirement for goods or services that would be detrimental to the health, safety or welfare of the County and/or its citizens.

**Employment Services:** Employee recruitment services, background investigations, polygraph testing, compensation studies, employee leasing, temporary employment services, employee skill assessments, employment program development and fitness for duty assessments.

**Ethics:** Pertaining to or relative to moral action, conduct, motive or character; as ethical emotion; professionally right or benefitting; conforming to professional standards of conduct.

**Evaluation Committee (EC):** An evaluation group established for the sole purpose of evaluating responses received from a County Solicitation.

**Fair Market Value:** Lowest purchase price paid by the state for like items or services purchased in a similar quantity within the last six months. If this information is not available, then the lowest of three phone quotes verified by price indices or purchases made by other government entities will be used.

**Filed:** The delivery of applicable document(s) to the Procurement Services Office. A time and date of Receipt shall be documented by the Procurement Services Office in a verifiable manner for purposes of filing.

**Firm:** Any business, individual, union, committee, club, organization or group of individuals.

**General Services Administration (GSA) Contract:** Program established by the Federal government for products and services procured from pre-vetted vendors. Procurement from vendors offering GSA Schedule pricing results in reduced costs and maximized efficiency due to

Federal volume procurement.

**Goods:** Any tangible property other than services or real property.

**Governing Instruments:** Legal documents that establish the existence of an organization and define its powers and shall include, but are not limited to, articles of incorporation, association, constitution, charter, and by-laws.

**Grant:** The furnishing by the County of assistance, whether financial or otherwise, to any Person or organization; or the receipt by the County of assistance, whether financial or otherwise, from any governmental or private entity. Grant does not include an agreement whose primary purpose is to procure a specific end product, whether in the form of Goods, Services, or Construction.

**Gratuity:** A payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless given without consideration.

**Indemnification and Insurance Requirement Sheet:** A standard document in which dollar limits will be reviewed by Human Resources/Risk Management, included in the quote, bid or proposal package, when applicable, and thus in the contract.

**Inspection:** Examination and testing of goods and services to determine whether the goods and services furnished conform to contract requirements.

**Invitation to Bid (ITB):** Solicitation documents, written or electronic, whether attached or incorporated by reference, which are used for Competitive Sealed Bidding for the Procurement of Goods, Services and/or Construction. The Invitation to Bid is used when the County is capable of clearly defining the scope of work for which a contractual Service or precise Specification defining actual commodities that are being procured.

**Latent Defect:** A deficiency or imperfection that impairs worth or utility that cannot be readily detected from visual examination of a product. Examples would be the use of non-specification materials in manufacture, or missing internal parts such as a gasket, gear, or electrical circuit, etc.

**Liquidated Damages:** A sum stated in a contract to be paid as ascertained damages for failure to perform in accordance with the contract. The damage figure stipulated must be a reasonable estimate of the probable loss to the agency, and not calculated simply to impose a penalty on the Contractor.

**Lobbying:** Any action taken by a Person to influence the decision of a Board member, the County Manager, any User Department/Division/Office personnel, and/or any individual serving on an Evaluation Committee during the Black-Out Period.

**Lobbyist:** An individual or group whose efforts are intended influence public and governmental policy.

**Local Small Business Enterprise (LSBE) Program:** Program developed to enhance contracting and Procurement opportunities for certified small business enterprises headquartered in Osceola County.

**Material Interest:** Direct or indirect ownership of more than five (5%) percent of the total assets or capital stock of any business entity.

**Materials:** Items that are incorporated into or attached to an end item or consumed in performing a Contract. Materials do not include land, a permanent interest in land, or leases of real property.

**Minority Owned Business Enterprise:** A Florida domiciled Small Business entity or firm:

- That is at least 51-percent-owned by Minority Persons who are members of an insular group that is of a particular racial, ethnic, or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group in an under representation of commercial enterprises under the group's control;
- For which the minority/women ownership exercises control and management over the daily business operations;
- That has been awarded certification as a valid minority Business enterprise certified by the State, other government entity within the State of Florida,, or the County, for meeting statutory criteria in certification; and
- That is legally organized to perform a specific line of business, or practice of a profession; and
- Ownership by a minority person does not include ownership which is the result of a transfer from a non-minority person to a minority person within a related immediate family group if the combined total net asset value of all members of such family group exceeds one million dollars. For purposes of this subsection, the term related immediate family group means one or more children under sixteen (16) years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

**Minority Person:** A lawful, permanent resident of Florida who is:

- African American - a Person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin;
- Hispanic American - a Person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race;
- Asian American - a Person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778;
- Native American - a Person who has origins in any of the Indian Tribes of North America prior to 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services; or
- American woman.

**Minority/Women Business Enterprise (MWBE):** A business that is either a minority-owned business enterprise or a women-owned business enterprise, or both.

**Must:** Denotes the imperative.

**Negotiation:** Legitimate, arm's length Discussion and conferences to reach an agreement on terms or price.

**Non-responsible:** Refers to a Bidder who does not have the capability to fully perform the Contract requirements, or who does not have the experience, reputation, and/or reliability to assure performance.

**Non-responsive:** Refers to a Bidder whose submittal does not conform to the mandatory or essential requirements of the Solicitation.

**Notice to Proceed:** A written notification from the Project Manager to the contractor to establish commencement of the contractor's responsibilities under the provisions of the contract.

**Opening:** Date and time set for Opening of Bids, Receipt of statements of qualifications or Receipt of proposals in Competitive Sealed Proposals, or in the case of a reverse auction, the date and time set for the auction close.

**Owner Direct Purchase Program:** Materials and commodities that will be purchased and paid for directly by the County that are incorporated into any public work project, which is under the direction or management of a Contract manager.

**Person:** Any Consultant, Business, individual, union, committee, club, representative, other organization, or group of individuals.

**Pharmaceuticals:** Medications used to diagnose, cure, treat or prevent disease.

**Pre-bid/Pre-proposal Conference:** Meeting held with prospective bidders or offers prior to submission of bids or proposals, to review, discuss, and clarify technical considerations, specifications, and standards relative to the proposed procurement.

**Procurement:** Buying, purchasing, renting, leasing, or otherwise acquiring of any Goods and/or services for public purposes in accordance with the laws, rules, regulations and procedures intended to provide for the economic expenditure of public funds. It includes but is not limited to all functions which pertain to the obtaining of any supplies, materials, equipment and/or services including construction projects and Capital Improvement Projects, as defined herein, required by any division/department/office or agency of County government regardless of the source of funds.

**Procurement Card (P-Card):** An instrument used to purchase goods/services in accordance with established procedures.

**Procurement Card (P-Card) Program:** A program designed to improve efficiency in processing low dollar purchases of commodities or Services from any provider that accepts a credit card.

**Procurement Services Director:** The principal officer for procurement-related activities duly authorized to conduct and approve Procurements as delegated by the County Manager; sign purchase orders for Procurements pursuant to the Administrative Code; manage Contracts and make written determinations with respect thereto.

**Procurement Services Office:** The central County Office responsible for County Procurements. The term may be used interchangeably with Procurement Services or Office.

**Professional Services (PS):** Any architectural, engineering, landscape architectural, registered land surveying, or planning activity as defined and prescribed under Florida Statute 287.055, as amended.

**Proposal:** An executed formal document submitted by an offeror to the County stating the good(s) and/or service(s) offered in response to a Request for Proposal or Request for Information.

**Public Notice:** Written announcement made by the County concerning a Solicitation or other information of general public interest.

**Purchase:** The same as Procurement, as defined herein.

**Purchase Order:** The County's document used to authorize a purchase transaction with a vendor; contains provisions for construction, goods and/or services ordered; applicable terms as to payments, discounts, date of performance and transportation; and other factors or conditions relating to the transaction.

**Purchase Requisition:** An internal document by which the County sends details of supplies, services or materials required to the Procurement Services Office.

**Quotation:** An oral or written informal offer to the County by a vendor for furnishing specific goods and/or services at a stated price.

**Receipt:** Actual Receipt of an item being delivered or the first attempted delivery by certified mail, or by any other means that provides conclusive evidence of the attempt to deliver to the last known address of party.

**Request for Letters of Interest (LOI):** A non-binding method solicitation method used to obtain information for services or projects that cannot be quantified.

**Request for Proposals/Competitive Proposal Solicitation (RFP):** A Solicitation method used to solicit proposals from potential providers of Goods, Services, and Construction. Price is not the only determining factor in an RFP and an award of a Contract may be accomplished in a single step or multi-step process.

**Request for Qualifications/Qualifications Based Solicitation or Professional Services (PS):** Solicitation method used to solicit proposals from potential providers of specific Services where price is not an evaluation factor.

**Request for Quotations (RFQ):** An informal Solicitation where oral or written quotes are obtained from a reasonable number of providers, preferably three (3), without formal advertising or Receipt of sealed Bids.

**Respondent:** A Person, Business, Firm or other group of individuals that submits a response to a Solicitation. The term Respondent may be used interchangeably with the term Bidder.

**Responsible Bidder/Offeror/Responsible Respondent:** An individual or Business which has submitted a bid, offer, proposal, quotation or response, which has the capability, as determined by the County, in all respects, to fully perform solicitation requirements with the integrity and reliability which give reasonable assurance of good faith and performance.

**Responsive Bidder/Offeror/Responsive Respondent:** An individual or business which has submitted a bid, offer, proposal, quotation or response, which conforms to all material aspects of the solicitation, as determined by the County.

**Service Disabled Veteran:** Veteran who has a service-connected disability of ten percent (10%) or greater as determined by the United States Department of Veteran Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense.

**Service Disabled Veteran Business Enterprise (SDVBE):** A Business that has been certified by the State of Florida to be an independently owned and operated business that:

- Employs 200 or fewer permanent full-time employees; and
- Together, with its Affiliates, has a net worth of five million dollars or less and, if a sole proprietorship, the net worth includes both personal and business investments; and
- Is organized to engage in commercial transactions; and
- Is domiciled in the State of Florida; and
- Is at least 51 percent-owned by one or more service disabled veterans; and
- The management and daily business operations are controlled by one or more service disabled veterans, or for a veteran with a permanent or total disability, by the spouse or permanent caregiver of the veteran.

**Services:** The furnishing of labor, time, and/or effort by professionals or Contractor, wherein the submission 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.

**Shall:** Used to denote the imperative.

**Sole/Single Source:** The only existing source of the only item which meets the needs of the user Department/Division/Office as determined by a reasonably thorough analysis of the marketplace.

**Solicitation:** An invitation or request by which the County invites participation in the Procurement process.

**Sourcing:** The identification and selection of the supplier whose costs, qualities, technologies, timeliness, dependability, and service best meet the County's needs.

**Specifications/Scope/Scope of Services/Scope of Work:** A statement of the requirements for product, materials, or process used to describe the goods and/or services required by the County.

**Sponsorship:** Monetary or/or in-kind fee paid to a property/entity (typically in sports, arts, entertainment or causes) in return for access commercial potential associated with that property/entity.

**Subcontractor:** Any Person employed to perform part of a contractual obligation under the control of the principal Contractor.

**Suspend/Suspension:** Action taken by the County Manager under the Administrative Code to temporarily disqualify or exclude a Person from participating in County Procurements for a definite period of time.

**Task Authorization/Order (TA):** Process used by a Department/Division/Office to obtain the appropriate approval for an individual engagement under certain continuing service agreements. The terms may be used interchangeably.

**Threshold:** The dollar value which determines the methods for the purchase or Solicitation of Goods and Services and authorization approval.

**Used or pre-owned:** Used to identify an item or equipment that is not new.

**Value Analysis:** A systematic and objective evaluation of the value of a Good or Service, focusing on an analysis of function relative to the cost of manufacturing or providing the item or service; provides insight into the inherent worth of the final Good or Service, possibly altering Specification and quality requirements that could reduce costs without impairing functional suitability.

**Vendor:** A supplier/seller of Goods, Services, and/or Construction. The term Vendor may be used interchangeably with provider or supplier.

**Warehouse Store:** Retailer offering goods at discounted prices to business and private customers via paid membership.

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