

BROWARD COUNTY PROCUREMENT CODE

Chapter 21 - OPERATIONAL POLICY, PROCUREMENT CODE, FINANCE AND ADMINISTRATIVE SERVICES DEPARTMENT 4

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Chapter 21 - OPERATIONAL POLICY, PROCUREMENT CODE, FINANCE AND ADMINISTRATIVE SERVICES DEPARTMENT

PART I. PURPOSES; APPLICATION; EXEMPTIONS; WAIVER; DIRECT PROCUREMENTS; GENERAL PROVISIONS.

21.1. Short Title.

These rules and regulations shall be known and may be cited as the "Broward County Procurement Code," and may be referred to herein as the "Code."

21.2. Purposes.

This Code shall be construed and applied to promote its underlying purposes, which are:

- (a) To establish a unified procurement system for Broward County (the "County") with centralized responsibility for its administration;
- (b) To provide economy, efficiency, and consistency in County procurement activities;
- (c) To enable the County to maximize the purchasing value of public funds by fostering broad-based competition within the free enterprise system;
- (d) To obtain, in a cost-effective and responsive manner, the goods and services required by County agencies to better serve the County's residents, visitors, and businesses;
- (e) To provide for equitable treatment of participating vendors;
- (f) To provide safeguards to ensure and maintain the quality and integrity of the County's procurement system; and
- (g) To promote public confidence in the procedures followed in public procurement by promoting transparency and uniformity in application.

21.3. Ethical Standards in Procurement.

(a) *County Employees and Elected Officials.* In connection with any matter covered by this Code, County employees must comply with the Broward County Employee Code of Ethics Act, Section 26-71, et seq., Broward County Code of Ordinances, and elected officials must comply with the Broward County Code of Ethics for Elected Officials, Section 1-19 of the Broward County Code of Ordinances.

(b) *Vendors.* Any vendor who seeks to do business with the County must comply with the ethical standards stated in this section. Any vendor that violates any of these ethical standards shall be subject to suspension and debarment as provided in Part XI of this Code.

- (1) No vendor shall discuss or consult with any other vendor intending to compete for the same or a similar County contract for the purpose of bid rigging, collusion, or other activities that are illegal, unethical, or are intended to or will result in limiting competition.
- (2) No vendor may submit any false or intentionally misleading information to the County in connection with or in response to any procurement.
- (3) No vendor may perform any action in connection with any procurement by the County if such action would violate Section 287.133, Florida Statutes (the Public Entity Crimes Act), Section 287.134, Florida Statutes (Discriminatory Vendors), or Section 287.135, Florida Statutes (Scrutinized Companies).

21.4. Application of this Code.

(a) *Application to Procurement.* Except as provided in Section 21.5 (Exemptions from the Procurement Code), this Code applies to the procurement of all goods, services, and construction by the County, and to the disposal of County property.

(b) *Application to Other Governmental Bodies.* Any governmental body other than those under the direct control of the Board may choose to utilize the procurement services of the Purchasing Division, with the concurrence of the Purchasing Division and the County Administrator. To the extent any such governmental body utilizes these services, they shall be subject to the provisions of this Code.

(c) *Application to Grants.* This Code applies to procurements funded by grants received by the County, except when the terms of the grant dictate otherwise, provided such terms are consistent with applicable law.

21.5. Exemptions from the Procurement Code.

(a) The following procurements are exempt from the requirements of this Code, but may utilize the provisions of this Code:

- (1) Procurements by Broward County Constitutional Officers, other than procurements of construction and construction-related goods or services that are funded by the County;
- (2) Services of legal counsel or experts by the Office of the County Attorney; and
- (3) Utilities including, but not limited to, electric, gas, water, telephone, cable, and internet services.

(b) Procurements of the goods and services listed below are exempt from the requirements of this Code, but such goods and services may be purchased by the Director of Purchasing, either competitively or noncompetitively, up to the Director of Purchasing's award

authority, if the Director of Purchasing determines that the purchase is in the best interest of the County. The Director of Purchasing may also delegate the authority to make such purchases to Directors of County Agencies. Any purchase that would exceed the Director of Purchasing's award authority must be approved by the Board. The exempted goods and services are:

- (1) Works of art for public places; art design, art conservation, and art repair services; and related artistic services;
- (2) Copyrighted circulation materials;
- (3) Direct purchases of advertising or advertisements from media organizations, including creative work provided by that media organization in connection with the purchase;
- (4) Real estate brokerage and appraising services; real property title insurance, title opinions, or abstracts; surveying costs under the monetary threshold applicable to procurements for CCNA services; and other related costs of acquisition or sale of real property;
- (5) Subscriptions to publications, periodicals, trade journals, training materials, research tools, databases, and other similar items, whether in hard copy or electronic form;
- (6) Services provided pursuant to County-administered or County-designated programs directly to individual persons;
- (7) Purchases of items with an estimated current market value of not more than \$3,000 that are made available for resale to the public;
- (8) Services provided directly to patients by licensed health professionals, e.g., doctors, nurses, and veterinarians;
- (9) Corporate and media sponsorship agreements;
- (10) Memberships to professional organizations;
- (11) Meeting rooms and hotel expenses;
- (12) Lectures by individuals;
- (13) Services provided by governmental agencies;
- (14) Continuing education events, programs, courses, and training;
- (15) Lobbying services before governmental agencies or legislative bodies; and

- (16) Services for the County Administrator or the County Auditor to be used in investigations or special projects of limited duration.

21.6. Waiver of Code.

The Board, by motion, may waive any or all provisions of this Code for any procurement at any time where the Board determines doing so would be in the best interest of the County.

21.7. Direct Procurement Authority.

(a) Upon recommendation of the County Administrator as set forth in Section 21.7(b) of this Code, the Board may elect to waive some or all of the provisions of this Code and serve as the direct procurement authority for the procurement of specified goods or services. In the role of direct procurement authority, the Board performs the role that would otherwise be performed by an Evaluation Committee.

(b) Any recommendation of the County Administrator for the Board to act as the direct procurement authority for a solicitation shall be based on the following findings:

- (1) The choice of goods or services to be procured:
 - a. Is anticipated to have substantial countywide impact, including, but not limited to, on the County’s economy, jobs, branding and marketability, infrastructure, or environment; or the quality of life of County residents, visitors, or employees; and/or
 - b. Involves unusually high levels of investment of public funding or other resources;
- (2) The goods or services to be procured are susceptible to delivery by materially different options, and the choice among those options requires the exercise of substantial discretion that may affect countywide policy; and
- (3) The procurement will likely require policy choices for which the procedures of this Code are unsuitable.

(c) Unless otherwise expressly approved by the Board, upon election by the Board to serve as the direct procurement authority, the following provisions shall automatically apply:

- (1) The Cone of Silence, Section 1-266 of the Broward County Code of Ordinances, shall apply with an effective commencement date for County Commissioners and all office personnel of any County Commissioner immediately upon approval of the solicitation, notwithstanding anything to the contrary in Section 1-266(c)(1).
- (2) No County Commissioner and no staff or office personnel of any County Commissioner may initiate contact with a vendor or a vendor’s representative

while the Cone of Silence is in effect. However, nothing shall prohibit a County Commissioner, the staff or office personnel of any County Commissioner, or any affected persons subject to the Code of Silence from communicating with the Director of Purchasing, the Chief Financial Officer, the Office of the County Attorney, or the person designated in the solicitation as the contact person for the solicitation, for the purpose of obtaining information or clarification with respect to the solicitation.

(3) The Cone of Silence shall remain in effect until the agreement resulting from the solicitation is awarded or the Board takes other action that ends the solicitation.

(d) All solicitation documents and vendor communications related to a solicitation under this section shall be promptly posted on the Purchasing Division website, unless precluded by applicable law, to ensure complete transparency of the solicitation process.

21.8. General Provisions.

(a) *Supplementary General Principles of Law Applicable.* All procurements of the County pursuant to this Code shall be governed by and construed in accordance with the provisions of this Code, as supplemented by the laws of the State of Florida, County ordinances, and County administrative rules and regulations, as applicable.

(b) *Requirement of Good Faith.* This Code requires all parties involved in the negotiation, development, performance, or administration of a County solicitation or contract to act in good faith. This requirement may not be waived by the Board.

(c) *Exhaustion of Administrative Remedies.* Whenever a vendor wishes to challenge a matter subject to protest under Part X of this Code, the vendor must timely file a proper protest pursuant to that Part before filing an appeal pursuant to Part XII of this Code or filing a civil action against the County with respect to that matter. Whenever a vendor or other party wishes to challenge a matter subject to appeal pursuant to Part XII of this Code, the vendor or other party must timely file a proper appeal pursuant to that Part before filing a civil action against the County with respect to that matter. Failure to comply with either or both of these requirements shall constitute a waiver of the right to file an appeal or civil action as provided in Sections 21.69 and 21.83 of this Code.

(d) *Determinations and Recommendations.* Determinations and recommendations required by this Code shall be made in writing and retained for the applicable retention period by the Purchasing Division in the appropriate official procurement file.

(e) *Contingency Fees Prohibited.* The payment of any compensation or other consideration to any person, other than the vendor or a bona fide employee of the vendor, made contingent on the award of a solicitation, issuance of purchase order, or execution of a contract with the County is strictly prohibited. This prohibition does not apply to fees paid to an insurance broker in connection with a solicitation to provide insurance coverage to the County.

(f) *Calculation of Days.* Unless otherwise expressly stated, all references to “days” in this Code mean calendar days between the hours of 8:30 a.m. and 5:00 p.m., excluding days that are County holidays. All references to “business days” in this Code mean Monday through Friday between the hours of 8:30 a.m. and 5:00 p.m., excluding days that are County holidays. In calculating time periods under this Code, the day of the event that triggers the time period shall be excluded from the calculation (for example, objections to a ranking must be filed within three (3) business days after the ranking is posted, so an objection to a ranking posted on a Monday must be filed no later than 5:00 p.m. on Thursday).

(g) *Severability.* If any provision of this Code is held invalid by a court of competent jurisdiction after completion of all filed appeals, such provision shall be null and void and deemed severable from the remaining provisions of this Code so that all remaining provisions of this Code remain in full force and effect.

PART II. PROCUREMENT ORGANIZATION

21.9. Transfer of Authority to Purchasing Division.

Except as otherwise provided in this Code, all rights, powers, duties, and authorities relating to the procurement of goods and services or the sale and disposal of supplies are vested in the Director of Purchasing.

The Director of Purchasing shall serve as principal procurement and contracting officer of the County. The Director of Purchasing may delegate the rights, powers, and authority vested in the position to subordinate purchasing agents and other employees as provided in this Code.

21.10. Procurement of Airport Concessions.

The Director of Purchasing shall conduct procurements for the Fort Lauderdale-Hollywood International Airport and North Perry Airport. However, the Director of the Broward County Aviation Department may conduct procurements for concessions (as defined in 49 C.F.R. § 23.3) at the Fort Lauderdale-Hollywood International Airport or North Perry Airport upon the written approval of the County Administrator. If such approval is provided, the Director of the Broward County Aviation Department shall act as the Director of Purchasing with respect to the concession procurement, and the concession procurement shall be subject to the provisions of this Code and all other rules, regulations, or policies applicable to County procurements, except as otherwise approved by the Board.

21.11. Delegation of Purchasing Authority to County Agencies.

The Director of Purchasing may, in accordance with established Broward County Administrative Policies and Procedures, delegate to any County Agency the authority to purchase goods or services, or classes of goods or services, provided that any such individual purchase does not exceed the Mandatory Bid Amount, and further provided that the Director of Purchasing

determines that it would be more advantageous to the County for such designated goods or services to be purchased by a County Agency rather than through the Purchasing Division. The Director of Purchasing may also delegate to any County Agency the authority to purchase goods or services from an existing county, municipal, state, federal, or nonprofit entity contract in any amount up to the Director of Purchasing's execution authority, provided that the Director of Purchasing determines that it would be more advantageous to the County for such goods and services to be purchased directly by a County Agency rather than through the Purchasing Division. Such delegated purchases shall be subject to the requirements of this Code and any administrative rules or regulations promulgated by the County. The Director of Purchasing may only delegate such authority to a County Agency if the Director of Purchasing determines that at least one individual within the County Agency fully understands the existing rules, regulations, and requirements of this Code and such individual(s) have passed a written test or completed training designated by the Purchasing Division designed to ensure such knowledge.

21.12. Promulgation of Regulations.

The Director of Purchasing may promulgate regulations that the Director of Purchasing deems necessary to implement any provision of this Code, in accordance with the applicable provisions of the Broward County Administrative Policies and Procedures. No regulation shall change any commitment, right, or obligation of the County or a vendor with respect to a contract that was in existence prior to the effective date of such regulation.

Enactment of this Code shall not affect any existing Purchasing Division regulation, unless such regulation conflicts with any provision of this Code. In the event of such a conflict, the conflicting regulation shall be null and void and the provisions of this Code shall govern with respect to procurements commenced after the enactment of this Code.

21.13. Duties of the Director of Purchasing.

Consistent with the provisions of this Code, and in accordance with regulations promulgated pursuant to this Code, the Director of Purchasing shall:

- (a) Procure or supervise the procurement of all goods and services for the County;
- (b) Establish procedures for issuance of purchase orders, and assignments of contracts; and approve all issuance of purchase orders and assignments of contracts in accordance with the terms of the applicable contract;
- (c) Work with the Office of Management and Budget in the preparation of statistical data relating to the County's procurement and usage of goods, services, and construction activities, and disposition of all County property. All County Agencies shall furnish such reports as the Director of Purchasing may require in fulfilling the Director of Purchasing's duties under this section;

(d) Establish procedures for the receipt and inspection of deliveries of goods and services to determine their quality, quantity, and conformance to contract requirements, and verify or review the receipt procedures of County Agencies; and

(e) Ensure that all authority delegated by the Director of Purchasing is being performed in accordance with the delegation instructions and the requirements of this Code.

21.14. Vendor Performance Rating System.

(a) *Authority.* The Director of Purchasing shall establish a vendor performance rating system to evaluate vendors periodically during contract performance, prior to contract renewal, and after final performance of a contract. Such evaluations may be performed by the Contract Administrator or the Director of Purchasing. Final performance evaluations may be considered by the Director of Purchasing, any Evaluation Committee, or the Board in evaluating a vendor's response to any other solicitation. The Director of Purchasing shall provide a monthly report to the Board of all final performance evaluations from the preceding month.

(b) *Vendor's Right to Respond.* When an evaluator intends to issue a final performance evaluation score below a total score of 2.6, the evaluator shall provide to the affected vendor a draft of the final performance evaluation. The affected vendor shall have ten (10) business days after receipt of the draft to submit to the evaluator any written information or other written materials that the vendor believes justify a higher score. The evaluator shall give good faith consideration to any such submitted materials prior to issuing a final performance evaluation score. If the final performance evaluation score is below 2.6, the vendor shall have ten (10) business days after it receives notice of such final score to submit a written rebuttal to the score, in which event the evaluator shall (i) clearly indicate on the scoring form that a vendor rebuttal has been received; and (ii) append the vendor rebuttal to the scoring form.

(c) *Final Performance Evaluations.* Final performance evaluations shall include the following:

- (1) A total score on a scale from 1-5; and
- (2) Additional documentation for any total score below a 2.6:
 - a. A detailed statement of facts along with all applicable documentary evidence supporting the scoring, including any correspondence or history relating to the vendor's performance under the contract;
 - b. A summary of any written materials timely submitted by the vendor after the vendor's receipt of a draft final performance evaluation; and
 - c. An appendix containing any timely submitted written rebuttal by the vendor to the final performance evaluation score.

(d) *Vendor's Right to Appeal.* A vendor may appeal a final performance evaluation score below 2.6 pursuant to Part XII of this Code. If a hearing officer (or an employee of the Office of the County Auditor, as applicable) orders the final performance evaluation score be rescinded, the evaluator shall issue a memorandum to the Director of Purchasing and the vendor indicating that the final evaluation score has been rescinded; shall append such memorandum and the hearing officer's final order to the front of the scoring form; and shall clearly indicate on the final evaluation scoring form that the evaluation has been rescinded pursuant to a successful appeal. No rescoring of the vendor's performance on the contract shall be required after a successful appeal.

PART III. SPECIFICATIONS

21.15. General Purpose and Policy.

(a) *Open Competition.* All specifications issued by the County shall seek to maximize free and open competition among vendors and shall preclude utilization of any specific brand or vendor, except with respect to Sole Brand or Sole Source procurements. However, specifications may eliminate some brands or vendors if the brands or vendors would not reasonably meet the needs of the County.

(b) *Review by the Director of Purchasing.* The Director of Purchasing shall review all specifications developed to ensure they allow for open and free competition and to ensure specifications that eliminate some brands or vendors do so to reasonably meet the needs of the County.

21.16. Development of Specifications.

The Director of Purchasing shall obtain subject matter expertise, advice, and assistance from personnel of County Agencies (and/or from third parties retained or consulted by the County) in the development of specifications for solicitations. Specifications shall not be any more restrictive than necessary to solicit goods and services that meet the County's needs. Any person or vendor that participates in the development of specifications for a solicitation may not submit, or assist in submitting, a response to that solicitation.

21.17. Insurance Specifications.

The Risk Management Division will determine and provide to the Director of Purchasing the insurance requirements to be included in a solicitation.

21.18. Environmentally Preferable Specifications.

It is the policy of the County to purchase environmentally preferable goods and services when such purchases are cost effective and consistent with the County's operational needs. Using

Agencies shall review specifications for the procurement of goods and services to ensure that this policy is being met. Environmentally preferable goods and services are those that:

- (a) Are within the top twenty-five percent (25%) of energy efficiency as established by Energy Star certification or Federal Energy Management Program designation for similar products;
- (b) Meet the specifications of the United States Environmental Protection Agency for water efficiency and performance (*i.e.*, WaterSense labeling criteria);
- (c) Are included in the United States General Services Administration's Green Procurement Compilation; or
- (d) Are otherwise consistent with the Federal Energy Management Program's Contracting for Efficiency: A Best Practices Guide for Energy-Efficient Product Procurement.

21.19. Standardization.

(a) The Director of Purchasing shall standardize types of goods or services used throughout the County. Standardization for purchases above the award authority of the Director of Purchasing shall require Board approval.

(b) Upon approval by the Board when required, standardized goods and services may be purchased by the Director of Purchasing regardless of the contract amount without further Board authorization. The Director of Purchasing shall submit a semi-annual report to the Board of any purchases of any standardized type of good or service for which the total purchase amount during the reported period exceeded the Director of Purchasing's award authority.

(c) The Director of Purchasing may recommend to the Board that any brand or source of goods or services be standardized as the Sole Brand or Sole Source of goods or services that will be purchased for a County Agency or countywide. Upon the Board's approval of a standardized Sole Brand or Sole Source, the Director of Purchasing may purchase such Sole Brands or Sole Sources regardless of contract amount, with or without competition, as determined by the Director of Purchasing to be in the best interest of the County. The Director of Purchasing shall submit a semi-annual report to the Board of any purchases of standardized Sole Brand or Sole Source goods or services for which the total purchase amount during the reported period exceeded the Director of Purchasing's award authority.

(d) The Director of Purchasing may destandardize any goods or services previously standardized by the Director of Purchasing or the Board if the Director of Purchasing determines that the goods or services are no longer required by the County or that such standardization is no longer in the best interest of the County.

21.20. Exceptions to Standardized Items.

If a Using Agency believes it would be better served by purchasing a brand or service other than the standardized brand or service, the Using Agency may request an exemption to the standardization, which may be granted by the Director of Purchasing. In any case where a Using Agency is denied an exemption, it may appeal that decision to the County Administrator who may approve the exemption.

PART IV. PROCUREMENT METHODS

21.21. Applicability.

Unless otherwise authorized by law or exempted from this Code, the County shall procure all goods, services, and construction through one of the methods listed in this Part.

21.22. Choice of Procurement Method.

Subject to the provisions of this Code, the Director of Purchasing, after consulting with the Using Agency, shall select for each procurement one of the methods of procurement listed in this Part. The Director of Purchasing's decision shall be based on the Director of Purchasing's determination of the method that would best serve the County's interest with respect to the goods or services being procured.

21.23. Competitive Solicitations.

(a) *Preferred Source Selection Methods.* Except as otherwise provided in this Code or applicable law, all procurements of goods and services for which the total expenditure is reasonably estimated to exceed the Mandatory Bid Amount shall be made through the following methods of competitive solicitation: Invitations to Bid ("ITB"), Request for Proposals ("RFP"), Request for Letters of Interest ("RLI"), or Request for Qualifications ("RFQ").

- (1) ITBs should be used when the County has determined the specific goods or services it wishes to procure and the only factor is price. ITBs may also be used in solicitations for a Qualified List of Vendors or a Qualified List of Products.
- (2) RFPs should be used when the County has determined the specific goods or services it wishes to procure, and has also determined that it is appropriate to procure such goods or services based on price, quality, experience of the vendor, and other factors identified in the solicitation. However, as provided under applicable law, price may not be a factor for procurements conducted pursuant to the CCNA.
- (3) RLIs should be used when the County wishes to obtain a solution to satisfy a need of the County with respect to a particular project or goal, and the County

determines that it is appropriate to select a vendor for such purpose based upon quality, experience of the vendor, and other factors identified in the solicitation. Price may, but is not required to be, a factor in RLI. RLI may also be used in solicitations for a Qualified List of Vendors or Qualified List of Products.

- (4) RFQs should be used to solicit prospective vendors regarding their qualifications to provide goods or services to the County. RFQs may also be used in solicitations for a Qualified List of Vendors or Qualified List of Products or as a first step in a two-step procurement.

(b) *Requirements and Evaluation Factors.* Competitive solicitations shall, with adequate specificity and in a clear and consistent manner, set forth (i) all requirements and specifications of the goods or services being procured, and (ii) the factors upon which responses will be evaluated.

(c) *Contract Terms.* Competitive solicitations shall contain, or shall incorporate by reference, terms and conditions approved by the Office of the County Attorney that will apply to any contract that may result from a competitive solicitation. With respect to ITBs, a vendor may not take any exception to the contract terms and conditions of the solicitation. With respect to RFPs, RLIs, and RFQs, a vendor must indicate in its response any and all exceptions it takes to the contract terms and conditions stated in the solicitation, including all proposed modifications to the contract terms and conditions or proposed additional terms and conditions. Such exceptions may be considered by an Evaluation Committee in its evaluation of responses. Any exceptions not expressly stated by the vendor in its response to an RFP, RLI, or RFQ are waived and may not be raised or asserted by the vendor in connection with development or negotiation of the contract.

(d) *County Business Opportunity Act.* The requirements of Section 1-81, et seq., Broward County Code of Ordinances (County Business Opportunity Act of 2012), shall apply to all competitive solicitations, unless specified otherwise in that section.

(e) *Domestic Partner Benefits.* The requirements of Section 16½-157, Broward County Code of Ordinances (County Contractors Providing Equal Benefits for Domestic Partners), shall apply to all applicable competitive solicitations to the extent stated in that section.

(f) *Drug Free Workplace.* The requirements of Sections 1-71, et seq., Broward County Code of Ordinances (Procurement from Businesses with Drug-Free Workplace Program), shall apply to all competitive solicitations, unless specified otherwise in that section; provided, however, that the provisions of Section 440.102, Florida Statutes, shall apply to solicitations for construction goods or services to the extent those provisions are inconsistent with Section 1-71, et seq.

(g) *Cone of Silence.* The requirements of Section 1-266, Broward County Code of Ordinances (Cone of Silence), shall apply to all competitive solicitations.

(h) *Local Vendor Preference.* The provisions of Section 1-74, et seq., Broward County Code Ordinances (Bidding Preference for Local Vendors), shall apply to all competitive solicitations as provided therein.

(i) *Recycled Materials Preferences for ITBs.* An ITB may allow up to a ten percent (10%) price preference to any responsive vendor that certifies the goods being procured by the County contain at least the minimum percentage of recycled content or degradable material content specified in the solicitation.

(j) *Bid Security on Competitive Solicitations.* The Director of Purchasing may require vendors responding to any competitive solicitation to post security to ensure they will honor the terms of their response. The amount of the security shall be a percentage of the estimated total cost of the goods or services being procured. The required form of the security shall be set forth in the solicitation. If a vendor withdraws its response before expiration of the time period during which the vendor must honor its bid, as such time is set forth in the solicitation, without first obtaining permission from the Director of Purchasing to withdraw in accordance Section 21.41(e) of this Code, then the County may execute on and retain the security.

(k) *Performance and Payment Security.* The Director of Purchasing may require vendors to post performance and/or payment bonds for any competitive solicitation. Any required performance and/or payment bond is in addition to, and not in lieu of, the bid security for competitive solicitations stated in Section 21.23(j). The amount of the bond shall be a percentage of the estimated total cost of goods or services being procured. The required form of the bond shall be set forth in the solicitation. Such bonds shall be required for any solicitation for a construction project in accordance with the requirements of Section 255.05, Florida Statutes. The Director of Purchasing may reduce the amount of a performance and/or payment bond required in a solicitation, except as prohibited by Section 255.05, Florida Statutes.

21.24. Small Purchases.

(a) *Applicability.* Any procurement that the Director of Purchasing estimates will have a cost under the Mandatory Bid Amount shall be considered a small purchase and shall be exempt from the requirements of competitive solicitations. Goods or services needed by a Using Agency or the County shall not be divided or allocated for the purpose of creating a small purchase. However, there is no requirement to aggregate all predicted amounts of any goods or services into a single procurement. The Director of Purchasing may deem it more beneficial or economical to purchase an annual or alternate quantity of goods or services at one time or to enter into an open-end contract for annual or alternate requirements, in which case the requirements governing competitive solicitations shall apply if the aggregate total exceeds the Mandatory Bid Amount.

(b) *Solicitation Methods.* Except as otherwise provided in this Code, small purchases may be procured through Quotation Requests or other informal methods deemed appropriate by the Director of Purchasing.

21.25. Sole Source Procurement.

The Director of Purchasing may conduct a Sole Source procurement upon determining there is only one source or one reasonable source for the specific goods or services required by the County, and provided such procurement would not be inconsistent with applicable law, including, but not limited to, Sections 255.20 and 287.055, Florida Statutes. Sole Source procurements may be conducted through any method authorized by this Code or by contracting directly with the sole source vendor, as the Director of Purchasing determines to be in the best interest of the County. Sole Source procurements shall be exempt from all County preferences, including, but not limited to, those under Section 21.23(d), (e), (h), and (i).

21.26. Sole Brand Procurement.

The Director of Purchasing may conduct a Sole Brand procurement upon determining that only one brand of specific goods or services will fulfill the needs of the County, and further provided such procurement would not be inconsistent with applicable law, including, but not limited to, Sections 255.20 and 287.055, Florida Statutes. Sole Brand procurements may be conducted through any procurement method authorized by this Code that the Director of Purchasing determines to be in the best interest of the County.

21.27. Purchases from Other Government Contracts.

The Director of Purchasing may purchase goods or services (*i.e.*, “piggyback”) under any procurement contract (the “originating contract”) held by a governmental agency or nonprofit entity, or the County may enter into its own contract with the vendor supplying goods or services under the originating contract if (a) the Director of Purchasing determines the originating contract was procured in accordance with generally accepted standards of public procurement; (b) the originating contract expressly permits such purchasing, or the governmental agency or nonprofit entity that awarded the originating contract or the vendor who holds the originating contract (as applicable) allows the County to purchase therefrom; and (c) the terms and conditions offered to the County by the vendor do not materially deviate from the terms and conditions of the originating contract. Nonmaterial deviations are permissible if they do not render the County’s purchase noncompetitive (*e.g.*, if the same deviation in the originating contract would not have materially altered the competitive nature of the procurement). The vendor is permitted to offer, and the County is permitted to accept, terms and conditions including price reductions that are more favorable to the County than the terms and conditions in the originating contract, provided that the modified terms and conditions, if included in the originating contract, would not have rendered the originating procurement noncompetitive.

21.28. Cooperative Purchasing.

The Purchasing Division may participate in, sponsor, conduct, or administer a cooperative purchasing agreement with one or more governmental agencies or nonprofit entities for the procurement of goods or services where the Director of Purchasing determines that such an agreement conforms to generally accepted standards of public procurement. Purchases made by

the County pursuant to such agreements shall be subject to the terms and conditions of the agreement and any applicable rules and regulations of the governmental agency or nonprofit entity that administers the agreement.

21.29. Open-End Contracts.

The Director of Purchasing may issue competitive solicitations for open-end contracts determined beneficial to the County's operations. The estimated usage of the goods or services being procured shall determine the proper awarding authority for these contracts, as provided in Section 21.46. If the estimate proves inaccurate, the awarded contract shall be valid, but during the next solicitation the estimate shall account for the amount expended for the goods or services under prior contracts, and the estimate shall be increased or decreased based on such information unless the Director of Purchasing determines in writing that such increase or decrease would be unreasonable under the circumstances presented. Once an open-end contract is awarded, the Purchasing Division or the Using Agency may execute purchase orders on the contract. Open-end contracts shall be subject to the contract duration requirements stated in Section 21.52.

21.30. Emergency Purchases.

(a) The Director of Purchasing may make, or authorize County Agencies to make, emergency purchases within or above the Director of Purchasing's award authority when the Board or the County Administrator determines there exists a threat to property or to the health, welfare, or safety of the County's residents, visitors, or employees. All emergency purchases shall be made with the maximum level of competition practically achievable under the circumstances. The Director, or designee, of the County Office or Department requesting an emergency procurement shall provide to the Director of Purchasing, prior to the issuance of a purchase order, a written justification for the emergency purchase including a statement of probable consequences if the emergency purchase is not made. In addition, the Director of Purchasing shall provide and maintain a written explanation setting forth the basis for all emergency purchases.

(b) The Director of Purchasing shall, within fifteen (15) days of the purchase, report to the Board any emergency purchase that exceeds the Director of Purchasing's award authority, which report shall explain the circumstances that justified the purchase. The Director of Purchasing shall, within fifteen (15) days of the increase, report to the Board any increase exceeding ten percent (10%) of the original amount of the emergency purchase previously reported to the Board.

(c) For any service covered by the CCNA, prior to the institution of any emergency procurement, the Board of County Commissioners must declare an immediate danger to the public health, safety, or welfare or other substantial loss that requires emergency action. Only the Board is empowered to waive any or all requirements of the CCNA.

21.31. Purchasing Card Program.

The Director of Purchasing is authorized to establish and administer a County Purchasing Card (P-Card) program for the efficient expenditures of funds within the guidelines of this Code, subject to the following:

(a) County Commissioners are ineligible to participate in the P-Card Program. Authorized County Commissioner's aides and direct staff may use P-Cards only to purchase office supplies, airline tickets, pay registration fees, or confirm hotel reservations (but not to pay hotel expenses) for approved travel for a County Commissioner or his or her staff. Each County Commissioner's office shall provide to the County Auditor a copy of all requests for payment through a P-Card within one (1) business day after use of the card, along with copies of all documentation relating to the purchase or reservation confirmation. For purposes of this subsection, "office supplies" means consumables normally used in a government office, and small office equipment with a unit cost of \$100 or less. Items of a decorative, capital, or personal nature, including, but not limited to, furniture, appliances, electronics that exceed \$100, break room supplies, any type of food or drink, and any item that is considered a luxury item not normally supplied by the County to all employees, are not considered office supplies.

(b) Each individual authorized to use a P-Card must sign an agreement that will be retained on file with the Purchasing Division. The agreement shall provide that the P-Card may be revoked upon any misuse of the P-Card; shall authorize payroll deductions for repayment of any unauthorized use of a P-Card; and may provide for any other conditions deemed necessary by the Director of Purchasing.

(c) The Director of Purchasing may revoke or reinstate the authority of any County Agency or employee to use a P-Card if the Director of Purchasing determines that such revocation or reinstatement is in the best interest of the County.

PART V. PROCEDURES FOR COMPETITIVE SOLICITATIONS

21.32. Applicability.

The procedures in this Part shall apply to all competitive solicitations unless specifically stated otherwise. For purposes of this Part, a competitive solicitation may also be referred to as a "solicitation."

21.33. Issuance of Competitive Solicitations.

Competitive solicitations shall be posted on the Purchasing Division's approved electronic bidding platform, except that procurements for concession services at the Fort Lauderdale-Hollywood International Airport or North Perry Airport may instead be posted on a website maintained by the Broward County Aviation Department. Solicitations for construction and CCNA services shall be issued and noticed in accordance with the applicable requirements of Florida law.

Modifications and addenda to a solicitation shall be issued in the same manner as the original solicitation. The Director of Purchasing may issue ITBs for any amount without Board approval. With respect to RFPs, RLIs, and RFQs the County Administrator may approve issuance of any solicitation with an anticipated total value of \$500,000 or less. Issuance of RFPs, RLIs, and RFQs with an anticipated total value of more than \$500,000 requires Board approval.

21.34. Responses to Competitive Solicitations.

(a) *Electronic Submissions.* Unless otherwise stated in the solicitation, responses must be submitted through the County's electronic bidding system, which can be accessed from the Purchasing Division's website. Complete responses must be properly submitted and received by the electronic bidding system by no later than the date and time stated in the solicitation. Responses received after the stated date and time will be disregarded.

(b) *Number of Responses - Extensions.* If a competitive solicitation receives fewer than three (3) responses, the Director of Purchasing may extend the deadline and seek additional responses by posting notice of such extension on the Purchasing Division's website or in the electronic bidding system posting of the solicitation. The Director of Purchasing shall determine the length of any extension period(s).

21.35. Unsolicited Proposals for Public-Private Partnership Projects.

In accordance with Section 255.065(3), Florida Statutes, the County Administrator may require vendors who submit an unsolicited proposal for a public-private partnership to pay a reasonable application fee, in accordance with Section 38.40 of the Broward County Administrative Code, to cover internal or external costs incurred by the County in its evaluation of the unsolicited proposal.

21.36. Misrepresentations.

A vendor's material misrepresentation in a response to a solicitation shall be grounds for finding a vendor nonresponsive or nonresponsible and may be grounds for suspension or debarment of the vendor. The Purchasing Department shall refer any material misrepresentation in a vendor's response to a solicitation to the Office of the County Attorney. The County Attorney may refer the matter for criminal prosecution, if appropriate.

21.37. Acceptance of responses and waiver of technicalities or irregularities.

(a) *Acceptance.* Responses to solicitations are accepted by the County "as is" and without correction or alteration, except as otherwise provided in this Code. A vendor may submit an amended response through the County's electronic bidding system any time before the deadline for responses to the solicitation.

(b) *Waiver of technicalities or irregularities affecting responsiveness.* A lack of conformity as to an issue of responsiveness that is nonsubstantive in nature may be considered a technicality or irregularity that may be waived by the Director of Purchasing. Examples of

technicalities or irregularities that may be waived include, but are not limited to, submission of a copy of a security bond when the solicitation calls for submission of the original, or submission of a required form that is completed but not signed. As to any waivable technicality or irregularity, the Director of Purchasing may require the submitter to correct the nonsubstantive issue.

(c) *Findings Required.* The Director of Purchasing may grant a waiver of a technicality or irregularity affecting responsiveness, on a case-by-case basis, only after making all of the following written findings:

- (1) A waiver would not deprive the County of its assurance that the contract will be entered into, performed, and guaranteed according to its specified requirements;
- (2) A waiver would not adversely affect competition by providing one vendor with a competitive advantage over another vendor or otherwise restrict competition;
- (3) A waiver would not create the appearance of favoritism or impropriety;
- (4) A waiver would not violate a requirement mandated by another governmental agency or grant-making institution, as applicable, that is providing funds for the solicitation in question; and
- (5) A waiver would not directly or indirectly affect the dollar amount submitted by the vendor in its response, except as provided in Section 21.41(a) regarding corrections of mathematical errors.

21.38. Cancellation of Solicitations.

The Director of Purchasing may cancel a solicitation in writing at any time before the deadline for responses. The reason(s) for cancellation shall be made part of the solicitation file.

21.39. Rejection of All Responses.

The Director of Purchasing may reject all responses to a solicitation, even when only one response is received, if the Director of Purchasing determines that doing so would be in the best interest of the County; provided, however, that only the Board may reject all responses to a solicitation where the issuance of the solicitation was approved by the Board.

21.40. Determinations of Responsiveness and Responsibility.

(a) *Determination of Responsiveness.* A solicitation may only be awarded to a vendor whose submission is responsive to the requirements of the solicitation. The Director of Purchasing shall determine whether submissions are responsive. This determination shall be final and may not be changed by the Evaluation Committee, if one is appointed for the solicitation.

(b) *Determination of Responsibility.* A solicitation may only be awarded to a vendor who is determined to be responsible to provide the goods or services requested by the solicitation. If a response to a solicitation is submitted by a joint venture, the joint venture will not be eligible to receive an award unless each member of the joint venture is determined to be responsible. A determination of responsibility shall be made only as to those vendors whose submissions have been determined to be responsive.

- (1) With respect to ITBs, the Director of Purchasing, in consultation with the Using Agency, shall determine whether vendors who have submitted responsive submissions are responsible.
- (2) With respect to RFPs, RLLs, and RFQs, the Evaluation Committee, with assistance of the Purchasing Division and based on information provided by the applicable County Agencies and the Office of the County Attorney, shall determine whether vendors who have submitted responsive submissions are responsible.
- (3) Notwithstanding the foregoing, the awarding authority for a solicitation shall have the ultimate authority to determine whether vendors who have submitted responsive submissions are responsible.
- (4) When making determinations of responsibility, the Director of Purchasing or the Evaluation Committee (as applicable) may request additional information from any vendor on matters that may affect a vendor's responsibility. The failure of a vendor to provide information requested by the County may result in a determination of nonresponsibility. In addition, a vendor may submit information regarding its responsibility; provided, however, that such information shall not be considered if it contradicts or materially alters the information provided by the vendor in its original response to the solicitation.

21.41. Procedures for ITBs.

- (a) *Correction of Mathematical Errors in Responses.*
 - (1) The Purchasing Division may correct mathematical computation errors that are evident on the face of a vendor's response to an ITB, subject to obtaining written consent of the vendor; provided, however, that the Purchasing Division may not change any unit prices.
 - (2) Additionally, any vendor may, subject to the approval of the Director of Purchasing, correct a mathematical computation error that is evident on the face of the vendor's response, even if such correction would result in the vendor becoming the lowest responding vendor; provided, however, no vendor may change unit prices.

(b) *Voluntary Reduction in Price.* The County may seek and accept a voluntary reduction in price from the vendor who has offered the lowest price; provided, however, that such reduction may not be conditioned on, nor result in, the modification or deletion of any other requirement of the solicitation.

(c) *Corrections After Award.* Any correction to the response of a vendor who has been awarded the solicitation may be permitted only by the awarding authority, except that no correction shall be permitted if it would result in the vendor's price no longer being the lowest price offered by a responsible and responsive vendor in response to an ITB.

(d) *Unbalanced Responses.* A response that offers lump sum or unit pricing that deviates significantly from the County's estimate of pricing or estimated utilization of the goods or services being procured shall be evaluated by the Purchasing Division, with assistance from the Using Agency, to determine if it is materially unbalanced or mathematically unbalanced. The Director of Purchasing may determine a materially unbalanced response to be nonresponsive. A solicitation may be awarded to a vendor who submits a mathematically unbalanced response, provided that the Director of Purchasing documents the justification for the award.

(e) *Withdrawal of Responses.* A vendor may withdraw its response to an ITB through the County's electronic bidding system at any time prior to the solicitation's response deadline. Thereafter, a vendor shall be bound by the terms of its response for the time period set forth in the ITB, subject to the following exceptions:

(1) *Clerical Errors.* If a vendor demonstrates to the satisfaction of the Director of Purchasing that its response contains a clerical error that cannot be corrected pursuant to Section 21.41(a) of this Code, the Director of Purchasing shall grant the vendor permission to withdraw its response.

(2) *Prima Facie Evidence of Error.* If a vendor demonstrates to the satisfaction of the Director of Purchasing, through the submission of written documentation, that its response contains an error so obvious on its face that it could only be result of a mistake and such error cannot be corrected by correcting a mathematical computation, the Director of Purchasing shall grant the vendor permission to withdraw its response.

A vendor who withdraws a submission in violation of this section may be suspended or debarred in accordance with the applicable provisions of this Code, and the County may execute on any bid security posted by the vendor.

(f) *Evaluation of Responses.* After evaluation of responses, the Director of Purchasing shall post on the Purchasing Division's website a notice of intent to award to the responsive, responsible vendor who submitted the lowest total price. A notice of intent to award may be protested in accordance with Part X of this Code.

(g) *Criteria for Breaking Ties.* If two or more responses to an ITB are tied, the tie shall be broken and the successful vendor selected by the application of the criteria listed below in the order listed. Unless otherwise provided by law, the criteria shall be applied by the Purchasing Division based on the information provided in the responses to the ITB or any additional information determined appropriate for consideration by the Director of Purchasing.

- (1) The vendor that is a locally based business; if the foregoing does not resolve the tie, the vendor that is a locally based subsidiary; if the foregoing does not resolve the tie, the vendor that is a local business, as those terms are defined in Section 1-74 of the Broward County Code of Ordinances.
- (2) If the foregoing does not resolve the tie, the vendor that provides domestic partner benefits, if required by the ITB.
- (3) If the foregoing does not resolve the tie, the vendor that provides the most advantageous delivery time, provided that delivery time is an element of the solicitation.
- (4) If the foregoing does not resolve the tie, the vendor that has, based on the most recent information available, received the lowest dollar volume of payments from the County on contracts previously awarded to that vendor in the five (5) year period preceding the deadline for responses to the solicitation. The dollar amount shall be calculated based upon the amount paid by the County to the vendor, minus the total of the vendor's confirmed payments to County Business Enterprise (CBE) firms acting as subcontractors or subconsultants for the vendor on County contracts with established goals, as such amount is determined by OESBD.

(h) *Award.* After the expiration of the protest period or resolution of a protest in accordance with Part X of this Code, the Director of Purchasing shall award the ITB to the responsive, responsible vendor who submitted the lowest total price if the value of the ITB is within the Director's award authority. If the value of the ITB exceeds the award authority of the Director of Purchasing, then the Director of Purchasing shall submit the ITB to the Board for award to the responsive, responsible vendor who submitted the lowest total price.

21.42. Procedures for RFPs, RLI, and RFQs.

(a) *Matters Related to Pricing.* When price is a factor in an RFP, RLI, or RFQ, the provisions in Sections 21.41(a) through (d) of this Code shall apply to the solicitation.

(b) *Withdrawal of Responses.* The provisions of Section 21.41(e) shall apply to RFPs, RLI, and RFQs.

(c) *Evaluation of Responses.* An Evaluation Committee, appointed in accordance with Section 21.45 of this Code, shall evaluate all responses to RFP, RLI, and RFQs that have been deemed responsive by the Director of Purchasing. The Evaluation Committee's review, including

shortlisting, scoring, and ranking, as applicable, shall be solely based on the evaluation factors set forth in the solicitation unless otherwise stated in this Code. If so provided in the solicitation, the Evaluation Committee shall accept presentations from responsive vendors with respect to their qualifications and responses. The Evaluation Committee may (1) shortlist vendors and then score or rank only the shortlisted vendors; or (2) score and/or rank all responses.

(d) *Criteria for Breaking Ties.* If an Evaluation Committee's scoring or ranking results in two (2) or more vendors being tied, the tie shall be broken by the application of the criteria listed below in the order listed. Unless otherwise provided by law, the criteria shall be applied by the Purchasing Division based on the information provided in the responses to the solicitation or any additional information determined appropriate for consideration by the Director of Purchasing.

- (1) The vendor that is a locally based business; if the foregoing does not resolve the tie, the vendor that is a locally based subsidiary; if the foregoing does not resolve the tie, the vendor that is a local business, as those terms are defined in Section 1-74 of the Broward County Code of Ordinances;
- (2) If the foregoing does not resolve the tie, the vendor that provides domestic partner benefits, if required by the solicitation.
- (3) If the foregoing does not resolve the tie, the vendor that has, based on the most recent information available, received the lowest dollar volume of payments from the County on contracts previously awarded to that vendor in the five (5) year period preceding the deadline for responses to the solicitation. The dollar amount shall be calculated based upon the amount paid by the County to the vendor, minus the total of the vendor's confirmed payments to County Business Enterprise (CBE) firms acting as subcontractors or subconsultants for the vendor on County contracts with established goals, as such amount is determined by OESBD.
- (4) If the foregoing does not resolve the tie, the Evaluation Committee shall reconsider the responses and rerank the tied vendors.
- (5) If the foregoing does not resolve the tie, the vendor receiving the most first place votes from the Evaluation Committee's reranking.

(e) *Notice of Ranking.* The Purchasing Division shall post the Evaluation Committee's ranking on the Purchasing Division's website. Rankings may be objected to in accordance with Section 21.42(h) or protested in accordance with Part X. The Purchasing Division shall, no later than the posting of the ranking, provide to the vendors that responded to the solicitation a summary of vendors' right to object and protest.

(f) *No Objection or Protest of Ranking.* If no vendor timely objects or protests, the ranking shall be final, provided that no County Commissioner objects within five (5) business days after receiving notice from the Purchasing Division of the final ranking. If a County Commissioner

objects to the ranking, the Board may consider the ranking in accordance with Section 21.42(j) of this Code.

(g) *Discovery of Material New Information.* If, after the posting of a ranking, the Purchasing Division discovers new information that the Director of Purchasing determines would have been material to the Evaluation Committee's ranking, the Director of Purchasing shall promptly notify in writing each vendor that submitted a response to the solicitation and shall reconvene the Evaluation Committee to consider the information. The Evaluation Committee may issue a new ranking based on the information submitted, and the procedures set forth in Section 21.42(e) shall apply to any new ranking.

(h) *Objection to Ranking.*

(1) A vendor may file with the Director of Purchasing a written objection to a ranking within three (3) business days after the ranking is posted on the Purchasing Division's website. The objection must be based on information that was not presented or submitted to the Evaluation Committee when it made the ranking. The objection must (1) identify the vendor submitting the objection and the solicitation involved; (2) include a clear statement of the information on which the objection is based; and (3) explain why the information, had it been presented or submitted to the Evaluation Committee, would have caused the Evaluation Committee to issue a different ranking. The objection must include all documents the submitting vendor offers in support of the objection, along with a statement from the submitting vendor attesting that all statements made in support of the objection are accurate, true, and correct.

(2) If the Purchasing Director determines that the information provided in the objection would not have been material to the Evaluation Committee's ranking, the Director of Purchasing shall so inform the objecting vendor in writing and state the reasons for that determination.

(3) If the Director of Purchasing determines that the information provided in the objection would have been material to the Evaluation Committee's ranking, the Director of Purchasing shall schedule a meeting of the Evaluation Committee to consider the information. The Evaluation Committee may issue a new ranking based on the information submitted, and the procedures set forth in Section 21.42(e) shall apply to any new ranking.

(i) *Protest of Ranking.* If a vendor protests a ranking in accordance with Part X of this Code, the Director of Purchasing shall not issue the award or submit the proposed award to the Board to award until the protest has been resolved; provided, however, that an award may be made by the appropriate awarding authority notwithstanding a filed protest if the Director of Purchasing determines in writing, pursuant to Section 21.66 of this Code, that the award must proceed without delay to protect a substantial interest of the County or the health, safety, and welfare of the County's residents, visitors, or employees.

(j) *Board Consideration of Evaluation Committee Ranking.* If an objection or protest has been filed with respect to an Evaluation Committee's ranking, the ranking must be submitted to the Board for final approval. The Board, by majority vote, may (1) accept the ranking as final; (2) reject all responses to the solicitation; or (3) direct the Evaluation Committee to reconvene to consider any new or additional information the Board directs the Evaluation Committee to consider. In addition, the Board may request presentations by the ranked vendors and may, by supermajority vote, rerank those vendors in a final ranking.

(k) *Negotiations.* Once a ranking is deemed final, the County shall commence contract negotiations with the top-ranked vendor (or, if provided in the solicitation, with multiple top-ranked vendors simultaneously). If the negotiation does not result in mutually satisfactory contract terms within a reasonable time, as determined by the Director of Purchasing, then the Director of Purchasing may terminate negotiations with the applicable vendor and commence (or continue, if the solicitation provided for negotiation with multiple top-ranked vendors) negotiations with the next-ranked vendor(s) or issue a new solicitation, as the Director of Purchasing determines to be in the best interest of the County.

(l) *Award.* Once the County staff and a vendor reach agreement on a proposed contract, the negotiated contract shall be presented to the appropriate awarding authority for approval and execution. No contract shall be effective and binding on the County unless and until approved and executed by the authorized awarding authority.

21.43. Procedures for Two-Step Solicitations.

The Purchasing Division may obtain goods or services through a two-step solicitation method. Step One shall be an RFP, RLI, or RFQ, which shall be issued and evaluated in accordance with Section 21.42 this Code or as otherwise provided in the solicitation. Step Two shall be an ITB or RFP, which shall be issued, evaluated, and awarded in accordance with Section 21.41 or 21.42 of this Code, as applicable.

21.44. Procedures for CCNA Services.

(a) *Applicability.* The County shall adhere to the requirements of the CCNA for the procurement of "professional services" for "projects" as those terms are defined in the CCNA. Whether a procurement constitutes a project under the CCNA, and whether it meets the monetary thresholds therein, shall be determined by the Using Agency and the Director of Purchasing in consultation with the Office of the County Attorney.

(b) *Solicitation Process.* The County may procure professional services for CCNA projects through RFPs, RLIs, RFQs, or two-step solicitations, and the procedures applicable to those solicitations shall also apply to the CCNA procurement, unless specifically stated otherwise in the CCNA or herein.

(c) *Continuing Contracts.* The County may enter into continuing contracts for CCNA services in accordance with the CCNA.

21.45. Evaluation Committees.

(a) *Appointment and Membership.* An Evaluation Committee shall be established for each RFP, RLI, and RFQ. The County Administrator shall appoint the members of the Evaluation Committee in accordance with the following requirements:

- (1) The Evaluation Committee shall have no fewer than three (3) voting members.
- (2) The voting members of an Evaluation Committee may include Broward County employees; provided, however, that no County employee may serve on an Evaluation Committee with an employee in the first employee's line of supervision, unless the County Administrator determines in writing that such an appointment is appropriate.
- (3) The County Administrator may appoint individuals not employed by the County when: a contract between the County and a third party requires the participation of a non-County employee on a particular Evaluation Committee; the County Administrator determines that a non-County employee has expertise in area(s) specifically related to the subject matter of the procurement; or a non-County entity has a significant financial concern or interest in the goods or services being procured.
- (4) Each Evaluation Committee member must affirm that they are free of conflicts of interest as provided by Part III, Chapter 112, Florida Statutes, and the Broward County Employee Code of Ethics. The County Administrator shall not appoint a person to an Evaluation Committee whose service would create the appearance of a conflict of interest. Upon discovery of a conflict of interest, the County Administrator shall replace the conflicted member with an eligible new member.

(b) *Administrative Support from County Staff.* The Using Agency and the Director of Purchasing shall provide staff to assist the Evaluation Committee in its review and evaluation of responses.

(c) *Scheduling and Administrative Matters.* After appointment of an Evaluation Committee, the Purchasing Division shall set the dates and times for the evaluation meetings, including shortlisting, scoring, and ranking of vendors, as applicable. These dates and times shall not be changed unless a properly filed protest of the solicitation pursuant to Section 21.63(a) remains unresolved or undecided, or if the Director of Purchasing determines it is appropriate to change such dates and/or times.

(d) *Quorum.* Unless otherwise provided by statute, ordinance, or emergency order, the physical presence of a majority of the voting members of the Evaluation Committee shall constitute a quorum. Once a quorum is established, an Evaluation Committee meeting may proceed without regard to the absence of any other members. Except as provided in Section 21.45(e), a member may attend a meeting and may vote by audio-interactive telephone

or video conference; provided, however, that no member attending the meeting by audio-interactive telephone or video conference may be counted for purposes of establishing a quorum.

(e) *Physical Presence Required for Voting.* Unless otherwise provided by statute, ordinance, or emergency order, only Evaluation Committee members who are physically present at all meetings that involve presentations by vendors or the scoring or ranking of vendors may cast a vote regarding such scoring or ranking. Any member who is absent for more than five (5) minutes during vendor presentations or committee discussions regarding vendor evaluation or ranking may not cast a vote or further participate in committee discussion regarding such scoring or ranking.

(f) *Responsibility of the Chair.* The Chair of the Evaluation Committee shall maintain order at the meetings. Any person who interrupts or otherwise disrupts the Evaluation Committee's deliberations, or a vendor's presentation, may be removed from the meeting after being warned by the Chair.

(g) *Oral Presentations.* In accordance with Section 286.0113(2)(b), Florida Statutes, any portion of an Evaluation Committee meeting during which a vendor makes a presentation or answers questions specific to that vendor's response to a solicitation shall be closed to the public, including to competing vendors. Such portions shall be video recorded, and the video recording shall be posted on the Purchasing Division's website prior to posting of the proposed ranking on the Purchasing Division's website.

PART VI. AWARDS AND EXECUTION

21.46. Award and Execution Authority.

(a) *Board of County Commissioners.* Except as otherwise provided in this Code, the Board shall make all awards, and authorize the execution of the associated contracts, with a value of more than \$500,000, inclusive of the value of any renewals or extensions provided for in the contract. All contracts awarded by the Board shall be signed by the Mayor, Vice-Mayor, or other designee, unless otherwise authorized herein.

(b) *Director of Purchasing.* In addition to any express delegation of authority by the Board in connection with a particular procurement, express delegation in a contract approved by the Board, or other express delegations in this Code, the Director of Purchasing is authorized to award solicitations, and execute the associated contracts (and amendments, extensions, and renewals thereof), subject to the following and any other applicable limitations stated in this Code:

- (1) The Director of Purchasing may award solicitations, and execute contracts associated with an award, in an amount not exceeding \$500,000, inclusive of the value of any renewals or extensions provided for in the award;
- (2) The Director of Purchasing may award ITBs and execute the associated contract (if any) with a value over \$500,000, inclusive of any extensions or renewals, provided: more than one vendor has submitted a response; the Director of Purchasing determines that the ITB has resulted in adequate, fair, and open competition; no vendor has been determined to be nonresponsive or nonresponsible; no protests have been timely filed; and no County Commissioner objected to such intended award within five (5) business days after receiving notice from the Purchasing Division of the intent to award;
- (3) The Director of Purchasing may execute contract amendments, extensions, or renewals, provided that the cumulative exercise of the Director of Purchasing's authority with respect to that contract does not exceed \$500,000; provided, however, that the Board may specifically approve in connection with any consideration of an amendment, extension, or renewal of the contract that the full amount of the Director of Purchasing's authority (*i.e.*, \$500,000) be restored with respect to that contract; and
- (4) The Director of Purchasing shall provide monthly reports to the County Administrator, the County Auditor, and the Board on all actions taken by the Director of Purchasing pursuant to this Section 21.46(b).

21.47. Rescission of Award.

The awarding authority may rescind an award any time before the effective date of the contract or before the issuance of a purchase order relating to the award, if the awarding authority determines that such rescission is in the best interest of the County.

21.48. Authority to Award After Rescission of Award or Termination of Contract Based on an ITB.

If within six (6) months after the deadline for vendor responses the award of the ITB is rescinded or the contract arising from the ITB is terminated, the awarding authority may award the ITB to the next lowest responsive and responsible bidder, provided that:

- (a) The awarding authority determines that it is in the best interest of the County to award based on the responses submitted, rather than to resolicit; and
- (b) The next lowest responsive and responsible vendor agrees, in writing, to honor the price offered in its response to the solicitation.

21.49. Authority to Reduce Scope of Construction Projects and Negotiate.

The County may negotiate an adjustment of the scope or requirements of a construction project in order to bring the contract price within the amount of available funds if: (1) all prices offered by vendors for the construction project exceed available funds, as determined in writing by the County Administrator; (2) the price offered by the lowest responsive and responsible vendor does not exceed such available funds by more than ten percent (10%); (3) time or economic considerations preclude resolicitation, as determined by the Director of Purchasing and the Using Agency; and (4) the adjustments are consistent with the purposes of this Code and determined by the applicable awarding authority to be in the best interest of the County.

PART VII. CONTRACTS

21.50. Contracts Resulting from Solicitations or other Procurements.

(a) *Best Interest of the County.* Any type of contract that will promote the best interest of the County may be used, subject to consultation with the Office of the County Attorney and the Using Agency for the particular procurement.

(b) *Qualified Lists.* The Director of Purchasing may establish Qualified Lists of Vendors or Qualified Lists of Products for various goods or services. The County may acquire those goods and services by first issuing Quotation Requests to the vendors on the applicable qualified list (or through other informal methods as may be established by the Director of Purchasing) and then executing individual purchase orders or other purchase documentation by the appropriate awarding authority.

21.51. Approval of Contracts by County Attorney.

All contracts requiring execution on behalf of the County under this Code and in a total cost to County of more than \$10,000 must, prior to execution, be approved as to form by the Office of the County Attorney. The requirements of this section apply to all contracts regardless of form, including purchase orders, form agreements, and click-thru/online terms and conditions.

21.52. Duration of Contracts.

(a) *Five-Year Limitation.* Unless otherwise provided by law, no County contract duration shall exceed five (5) years without the express approval of the Board.

(b) *Fiscal Year Funding.* If the contract term exceeds the current County fiscal year at time of execution of the contract, only funding for the current County fiscal year (or portion thereof) is required at the time of contracting, and funds for the remaining duration of the contract are not required to be available at the time of contracting. The County's payment and performance obligations for any fiscal years (or portions thereof) after the first fiscal year of the contract term shall be subject to the availability of funds as appropriated by the Board.

(c) *Leases.* Any lease of personal property, or lease with an option to purchase personal property, paid from ad valorem tax funds shall not exceed two (2) fiscal years without Board approval.

(d) *Extension/Renewal of Open-Ended Contracts.* Open-ended contracts shall, when practical, provide for an extension or renewal of the contract for a specified time period upon mutual consent of the County and the vendor. The County may only consent to an extension or renewal if the Director of Purchasing determines that an extension or renewal is in the County's best interest. No contract may be renewed or extended beyond five (5) years (inclusive of all terms) without Board approval.

21.53. Price Adjustments.

Contracts may be awarded with provisions for upward or downward price adjustments, subject to the availability of funds for the applicable fiscal year, provided that an allowance for such adjustments is contained in the solicitation, or negotiated in a contract arising from the solicitation, and the adjustments are based on a nationally recognized or published index or other criteria acceptable to the Director of Purchasing.

21.54. Advance Payments.

It is the County's policy not to make advance payments for goods or services unless the Director of Purchasing determines, in consultation with the Using Agency, that any such payment would be in the County's best interest; provided, however, that advance payments may be made without such determination for the following: insurance and bonding; software and software support and maintenance services; and subscriptions.

21.55. Change Orders - Construction Contracts.

All construction contracts must permit the County to require changes in quantities, additions or deletions of work, or other changes to the original scope of the contract. Every construction contract must have an initial allowance budgeted for change orders in an amount not to exceed five percent (5%) of the total contract amount, unless otherwise approved by the Board. The Contract Administrator may approve change orders within the budgeted allowance provided that no individual change order exceeds \$250,000. In addition to the foregoing authority of the Contract Administrator, the Director of Purchasing may approve change orders in an individual and cumulative amount that does not exceed ten percent (10%) of the original contract amount or \$100,000, whichever is less. Change orders that would exceed the authority of the Contract Administrator or the Director of Purchasing may only be approved by the Board.

21.56. Right to Audit.

The County may audit the books and records of any vendor under any contract with the County.

21.57. Termination of Contracts.

Unless otherwise stated in the contract, the County's termination authority for a contract may be exercised by the authority that awarded the contract, after consultation with the Office of the County Attorney.

21.58. Contract Administration.

(a) *Contract Administrator.* Unless otherwise specified in the contract, the Director of the Using Agency, or the Director's designee, will serve as Contract Administrator and will monitor compliance by the County and the vendor with all material terms and conditions of the contract. The Contract Administrator must maintain a written record of performance for each contract including vendor performance evaluations conducted under Section 21.14 and Section 21.58(g).

(b) *Maintenance of Insurance.* If the Contract Administrator learns that a vendor cancels or fails to maintain the insurance required by its contract, the Contract Administrator shall immediately notify the vendor in writing that it must obtain the required insurance. If the vendor fails to timely do so, the Contract Administrator shall recommend termination of the contract to the Director of Purchasing.

(c) *Resolution of Breach by Contract Administrator.* In cases where the vendor does not adhere to the contract terms or conditions or is in breach of a contract, the Contract Administrator shall promptly attempt to rectify the situation with the vendor and shall maintain a written record of these attempts.

(d) *Resolution of Breach by Director of Purchasing.* If the Contract Administrator is unable to promptly rectify a breach of contract by the vendor, the Contract Administrator shall refer the matter and provide all documents relevant to the breach to the Director of Purchasing for resolution. If the Director of Purchasing is unable to resolve the breach, the Director of Purchasing may terminate the contract (if the value of the contract was within the Director of Purchasing's award authority); recommend that the Board terminate the contract (if the contract was awarded by the Board); suspend or debar the contractor; and/or refer the matter to the Office of the County Attorney for appropriate legal action.

(e) *Complaints from Vendors; Informal Dispute Resolution Process.* Vendors who have a disagreement with the Contract Administrator regarding performance of the contract may file a complaint with the Department Director for the Using Agency. If the vendor is dissatisfied with the Department Director's determination, the vendor may seek review of that determination by requesting such review from the Director of Purchasing, in writing, within seven (7) days after notice of the Department Director's determination. The review request must state the factual and contractual issues on which it is based. The Director of Purchasing shall investigate the matter and consult with the Office of the County Attorney and the Contract Administrator. Within seven (7) days after receipt of the review request, unless resolved by mutual agreement, the Director of Purchasing shall email and mail to the vendor the written decision of the Director of

Purchasing regarding the matter of disagreement. The Director of Purchasing shall copy the Contract Administrator on the communication of the decision to the vendor.

(f) *Assignments and Delegations of Contracts and Purchase Orders.* Before assigning or delegating any contract from a CBE-certified prime contractor to a non-CBE-certified prime contractor, the Director of Purchasing shall consult with OESBD concerning the impact of such assignment or delegation on achievement of the CBE participation goal. Absent contrary direction from the Board or the County Administrator, the Director of Purchasing shall not approve such assignment or delegation if OESBD determines it will have a material adverse impact on achievement of the CBE goal.

(g) *Evaluation of Performance of Vendors.* The Contract Administrator shall evaluate the performance of the vendor pursuant to Section 21.14 of this Code (Vendor Performance Rating System), including achievement of any participation goals set by OESBD, and shall report same to the Board no less than annually. For vendors who receive a final performance evaluation score below 2.6 in connection with two (2) or more contracts over a five (5) year period, a report to the Board is required prior to the release of final payment, final approval of delivery of contracted services, or contract termination. Evaluation of the achievement of participation goals shall be done in conjunction with OESBD.

PART IX. SOLICITATION OR AWARDS IN VIOLATION OF LAW OR RULES AND REGULATIONS

21.59. Applicability.

The provisions of this Part apply when it is determined by the Director of Purchasing, or upon administrative or judicial review, that a solicitation, proposed award, or award of a contract is in violation of law, this Code, or County rules or regulations.

21.60. Remedies Prior to an Award.

If it is determined prior to award that a solicitation or proposed award of a contract is in violation of law, this Code, or County rules or regulations, the solicitation or proposed award shall be canceled or revised to comply with the applicable law, Code provision, or rules or regulations.

21.61. Remedies After an Award.

If it is determined that an award of a solicitation was made in violation of law, this Code, or County rules or regulations, then:

(a) If the vendor awarded the contract has not acted fraudulently or in bad faith, as determined by the Director of Purchasing:

(1) The contract may be ratified and affirmed by the awarding authority; or

(2) The contract may be terminated by the awarding authority in a manner designed to eliminate or minimize any damages to the vendor.

(b) If the vendor awarded the contract has acted fraudulently or in bad faith, as determined by the Director of Purchasing:

(1) The contract may be terminated by the awarding authority; or

(2) The contract may be ratified and affirmed by the awarding authority if the Director of Purchasing determines that such action is in the best interest of the County, without prejudice to the County's right to seek damages or other relief as the County deems appropriate.

21.62. No Responsibility for Unauthorized Purchasing.

The County may disclaim responsibility and liability for any expenditure or contract arising from a solicitation or purchase made in the name of the County, any County Agency, or any governmental body under County authority, by any person who lacks the authority to make such expenditure or contract under the provisions of this Code or applicable law. If the expenditure or contract is disclaimed, the liability and expense of such disclaimed expenditure or contract shall be the personal obligation of the individual who acted without authority.

PART X. PRE-LITIGATION RESOLUTION OF CONTROVERSIES

21.63. Right to Protest.

Any vendor who has a substantial interest in and is aggrieved in connection with the specifications, requirements, proposed award, or ranking of vendors for a solicitation with a value equal to or greater than the Mandatory Bid Amount may protest in writing to the Director of Purchasing as follows:

(a) Any written protest concerning the specifications or requirements of a solicitation (or of any addenda thereto) must be received by the Director of Purchasing within five (5) business days after the applicable solicitation (or addenda) is posted on the Purchasing Division's website.

(b) Any written protest concerning a proposed award or ranking must be received by the Director of Purchasing within five (5) business days after the proposed award or ranking is posted on the Purchasing Division's website.

(c) Failure to file a written protest so that it is received by the Director of Purchasing within the timeframes set forth in this section shall constitute a waiver of the right to protest. A protest submitted to anyone other than the Director of Purchasing shall not be a valid protest.

21.64. Grounds for Protest.

A protest must state the grounds on which it is based and must include all information and materials that the protestor wishes the County to consider in addressing the protest. Any ground not raised in a written protest shall be deemed waived. No information or materials submitted by a protestor after the protest is filed may be considered as part of the protest, unless such subsequent submittal is requested or consented to in writing by the Director of Purchasing.

21.65. Filing Fee.

As a condition of initiating any protest, the protestor must, concurrently with filing the protest, pay a filing fee for the purpose of defraying the costs in administering the protest in accordance with the schedule provided below. The filing fee shall be refunded if the protestor prevails in the protest. Failure to timely pay the required filing fee shall render the protest invalid.

Estimated Contract Amount	Filing Fee
Mandatory Bid Amount up to \$250,000	\$500
\$250,001 - \$500,000	\$1,000
\$500,001 - \$5 million	\$3,000
Over \$5 million	\$5,000

The estimated contract amount shall be the total bid amount offered by the protesting vendor in its response to the solicitation, inclusive of any contract renewals or extensions. If no bid amount was submitted by the protestor, the estimated contract amount shall be the County’s estimated contract price for the procurement. The County will accept a filing fee in the form of a money order, certified check, or cashier’s check, payable to “Broward County,” or other manner of payment approved by the Director of Purchasing.

21.66. Effect of Protest.

If a protest is filed that meets the requirements of this Part, the County shall not proceed with the solicitation or award until the Director of Purchasing issues a written decision, unless the Director of Purchasing makes a written determination that the solicitation or award must proceed without delay in order to protect a substantial interest of the County or the health, safety, and welfare of the County’s residents, visitors, or employees.

21.67. Authority to Resolve Protests.

The Director of Purchasing is authorized to resolve any protest by mutual agreement with the protestor, provided the Director of Purchasing determines that such resolution is in the best interest of the County.

21.68. Director of Purchasing's Decision.

If the protest is not resolved, the Director of Purchasing shall, after consultation with the Office of the County Attorney, issue a written decision on the protest within fifteen (15) business days after receipt; provided, however, that the Director of Purchasing may, due to extenuating circumstances, extend the time to issue a decision by providing written notice of the extension to the protestor. Any such extensions shall be for the least amount of time practicable, and the notice of extension shall state the basis therefore and the new deadline for issuing the written decision. The written decision shall state the basis for the decision and inform the protestor of its appeal rights and appeal bond requirement. A copy of the Director of Purchasing's written decision shall be promptly provided to the protestor by email to the email addresses provided in the protest.

21.69. Exhaustion of Administrative Remedy.

The filing of a protest is an administrative remedy that a vendor must exhaust before filing an appeal of the Director of Purchasing's decision or filing a civil action against the County with respect to the subject matter of the protest.

21.70. Appeals.

The protestor may appeal the Director of Purchasing's denial of the protest with respect to the proposed award of a solicitation in accordance with Part XII of this Code. Decisions by the Director of Purchasing with respect to the specifications or requirements of a solicitation may not be appealed.

PART XI. SUSPENSION AND DEBARMENT

21.71. Authority.

The Director of Purchasing shall provide written notice to any party under review for potential suspension and/or debarment. The notice shall state the grounds for the potential suspension and/or debarment and shall offer the party the opportunity to respond to those grounds in writing. The Director of Purchasing may also hold a meeting with the party to discuss those grounds, if the Director of Purchasing determines a meeting is appropriate. After consideration of the party's written response and/or meeting with the party, the Director of Purchasing may, after consultation with the Office of the County Attorney, suspend or debar the party from consideration for award of future County contracts. For purposes of this Part, "party" means any individual or entity.

21.72. Cause for Suspension.

The Director of Purchasing may suspend a party when the Director of Purchasing has probable cause to debar the party. A vendor may not be suspended for longer than three (3) months unless

the County has commenced debarment proceedings against the vendor, in which case the suspension may last until the debarment proceedings are concluded.

21.73. Cause for Debarment.

A party may be debarred for any of the following:

(a) When a party, or an officer, director, owner, member, partner, or management-level employee of a party, is convicted of a criminal offense relating to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) When a party, or an officer, director, owner, member, partner, or management-level employee of a party, is convicted of a crime of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of integrity or honesty;

(c) When a party, or an officer, director, owner, member, partner, or management-level employee of a party, is convicted under state or federal antitrust statutes relating to the submission of bids or proposals for a government contract;

(d) When a party, or an officer, director, owner, member, partner, or management-level employee of a party, violates the provisions of any contract with the County, which violation is of a character that the Director of Purchasing determines to justify debarment action, including:

- (1) Deliberate failure without good cause to perform in accordance with contractual specifications or within the time(s) for performance required by the contract; or
- (2) A significant recent record of failure to perform or of unsatisfactory performance in accordance with the terms of the contract, provided that the failure to perform or unsatisfactory performance was not caused by acts beyond the reasonable control of the party.

(e) Failure of a vendor awarded a contract to provide the required bonds, insurance, or other certificates within ten (10) days after demand therefor by the Purchasing Division;

(f) Refusal to accept a purchase order or execute a contract within ten (10) days after demand therefor by the Purchasing Division, provided that the purchase order or contract conforms to the solicitation at issue;

(g) Suspension or debarment within the last three (3) years of another entity of which any of the party's principals or officers were principals or officers at the time of the suspension or debarment, unless there is clear evidence that the suspension or debarment resulted from conduct that did not involve such principal or officer;

(h) Violation of the ethical standards set forth in Section 21.3 of this Code or under Florida law;

(i) Violation of the Cone of Silence, Section 1-266, Broward County Code of Ordinances, on three (3) or more occasions within the prior five (5) year period;

(j) Violation of the fair dealing policy set forth in Section 1-81.6(b), Broward County Code of Ordinances;

(k) If a party received three (3) or more final performance evaluations pursuant to Section 21.14 of this Code over a five (5) year period and three (3) or more of those total scores were below 2.6;

(l) If a party made material misrepresentations in response to or related to a solicitation;

(m) If a party is debarred by another governmental entity; or

(n) Any other cause the Director of Purchasing determines to be so serious and compelling as to affect the party's responsibility as a County vendor.

21.74. Decision by Director of Purchasing.

If the Director of Purchasing determines that suspension or debarment is warranted, the Director of Purchasing shall send, by mail and email, the written suspension or debarment decision to the party. The decision shall state the reason(s) for the action taken and inform the party of its rights to administrative review, as applicable.

21.75. Effect of Suspension or Debarment.

A party that is suspended or debarred may not respond to any County solicitation, nor be approved as a subcontractor on any County contract, for the duration of the suspension or debarment. If an individual is suspended or debarred, the suspension or debarment shall extend to all entities for which the individual serves as an officer or principal.

21.76. Period of Suspension or Debarment.

The period of suspension or debarment shall be commensurate with the seriousness of the grounds and shall continue for the entire time set by the Director of Purchasing, unless the party is reinstated in accordance with Section 21.77 of this Code. Suspensions may not exceed three (3) months unless the Director of Purchasing commences debarment proceedings against the party during the suspension period, in which case the suspension period shall extend until the debarment process (including any appeal of a debarment decision) has concluded. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. The Director of Purchasing may debar a party indefinitely if the ground(s) for debarment evidence willful or egregious conduct by the party.

21.77. Reinstatement.

(a) *Application for Reinstatement After End of Debarment Period.* After the conclusion of a debarment period, a debarred party that wishes to be reinstated must submit an application to the Director of Purchasing. The application must include the following information:

- (1) The name, address, and telephone number of the party making the request or of the party's representative;
- (2) A factual statement indicating how the circumstances that led to the debarment have been cured or otherwise addressed;
- (3) A list of government projects or contracts awarded or completed during the two (2) years immediately preceding submittal of the reinstatement application; and
- (4) A list of all County Agencies for which the party performed work in the five (5) years preceding debarment.

(b) *Application for Reinstatement During Debarment Period.* Applications for reinstatement during the period of debarment must be made in writing, must include the information required by Section 21.77(a)(1) through (4), and must be based upon the following:

- (1) Discovery of new and material evidence not previously available that may exonerate the debarred party or mitigate grounds for debarment;
- (2) Dismissal of the indictment or reversal of the conviction on which the debarment was based; or
- (3) Material change in ownership or management sufficient to justify a finding of present responsibility.

(c) *Procedures.* The Director of Purchasing shall review applications for reinstatement and make a written determination whether to reinstate based on the party's written submission, without a hearing. A copy of the determination shall be mailed and emailed to the party by the Purchasing Division.

(d) *Appeals.* A party may appeal any debarment or reinstatement decision made by the Director of Purchasing in accordance with Part XII of this Code.

PART XII. APPEALS

21.78. Right of Appeal.

Any party who has received an adverse determination with respect to any of the matters listed in Section 21.79 may submit a written appeal of that determination to the Director of Purchasing.

21.79. Matters that May Be Appealed.

The following matters may be appealed pursuant to the requirements in this Part:

- (a) A determination regarding responsiveness by the Director of Purchasing;
- (b) A determination by the Director of Purchasing regarding a protest of a proposed award or ranking of vendors;
- (c) A determination by the Director of Purchasing regarding debarment of a vendor or refusal to reinstate a debarred vendor;
- (d) A determination by the County's Office of Professional Standards of a vendor's violation of Section 1-266, Broward County Code of Silence Ordinance; and
- (e) A vendor performance rating score below 2.6, unless there is pending litigation between the vendor and the County relating to the contract at issue. If a vendor files litigation against the County regarding such contract after filing the appeal, the appeal shall be deemed withdrawn by the vendor effective upon the filing of the litigation.

21.80. Time for Appeal.

Appeals must be received by the Director of Purchasing within ten (10) calendar days after the date of the determination being appealed.

21.81. Form of Appeals.

Appeals must be made in writing and must state the facts and arguments upon which the appeal is based and the email address of the appealing party. If an appeal is based on a determination made by the Director of Purchasing, such appeal shall be limited to the scope of the protest or determination, as applicable.

21.82. Bond Requirement.

- (a) An appeal of the Director of Purchasing's determination concerning a protest of a proposed award or ranking must be accompanied by an original appeal bond or certified copy thereof in a form prescribed by the Director of Purchasing and in an amount equal to one percent (1%) of the estimated contract amount or \$25,000, whichever is less; except that if the estimated contract amount is less than \$250,000, the bond amount shall be \$500. The estimated contract

amount shall be the amount offered by the appealing vendor in its response to the solicitation, inclusive of any amounts for extensions or renewals provided for in the solicitation. The bond shall be conditioned upon payment of all costs and fees awarded to the County pursuant to Section 21.86(e) of this Code.

(b) Any appeal relating to a final performance evaluation must be accompanied by an original appeal bond or certified copy thereof in a form prescribed by the Director of Purchasing in the amount of \$5,000, unless such appeal will be heard by an employee of the Office of the County Auditor pursuant to Section 21.86(a)(1) of this Code, in which case no appeal bond shall be required.

(c) In lieu of an original appeal bond or certified copy thereof, the County will accept a money order, certified check, or cashier's check, payable to "Broward County," or other manner of payment approved by the Director of Purchasing, in the required amount. If the appealing party provides a conforming check or money order directly to the County in lieu of a bond, that money shall remain in place under the same conditions as a bond.

(d) The bond shall remain in place until (1) the hearing officer grants the appeal, in which case the bond shall be returned in full; or (2) the appealing party pays all costs awarded to the County pursuant to Section 21.86(e) of this Code. Failure to provide and maintain the required bond shall be deemed an immediate withdrawal of the appeal.

21.83. Exhaustion of Administrative Remedy.

Except as otherwise provided by law, the filing of an appeal pursuant to this Part is an administrative remedy that must be exhausted prior to the filing of any civil action against the County concerning the subject matter of the appeal.

21.84. Intervenors.

Any party who, under Florida law, has standing to intervene in an appeal filed under this Part may file a motion to intervene with the hearing officer in accordance with Section 21.86(a)(4) of this Code.

21.85. Stay of Procurements During Appeal.

If an appeal meeting the requirements of this Part is filed, the County shall not proceed with a solicitation or an award of the contract at issue until issuance of a decision by a hearing officer (or the Office of the County Auditor, if applicable), unless the Director of Purchasing makes a written determination that the solicitation or award must proceed without delay in order to protect a substantial interest of the County or the health, safety, and welfare of the County's residents, visitors, or employees.

21.86. Hearings.

(a) *Hearing Procedures.* The following procedures shall apply to hearings conducted pursuant to this Part:

- (1) A vendor who appeals a final performance evaluation shall have the option to utilize an employee of the Office of the County Auditor designated by the County Auditor to act as the hearing officer for such appeals, provided the vendor includes in the appeal a written request to utilize such an employee; in such instances, the designated employee of the Office of the County Auditor may exercise the powers and shall perform the functions of the Administrative Law Judge as described in this Part. All hearings shall commence within thirty (30) days after the assignment of the employee designated by the County Auditor.
- (2) For all other appeals, after receipt of an appeal that meets the requirements of this Part, the Purchasing Division shall promptly contact the State of Florida Division of Administrative Hearings (“DOAH”) for assignment of an Administrative Law Judge (“ALJ”) to preside over a hearing. All hearings shall commence within thirty (30) days after the assignment of the ALJ, occur at times agreed to by the ALJ and the parties, and be held in Broward County, Florida, or via videoconference with videoconference facilities made available by the County for participation by the appealing party, unless otherwise agreed by the parties and the ALJ. The County shall provide a notice of the hearing by certified mail, return receipt requested, and email to the appealing party or to its designated representative at the addresses stated in the appeal. The notice shall state the time and place of the hearing and the name of the assigned ALJ. Hearings shall be governed by the provisions of this Code, as supplemented by Florida law.
- (3) At the discretion of the ALJ, and upon a showing of good cause, depositions may be allowed in lieu of live testimony from a witness unavailable to attend the hearing.
- (4) All pre-final hearing motions, including motions to intervene, must be filed at least ten (10) days prior to the final hearing date, and must be served on all parties to the appeal. The ALJ shall have discretion to set a hearing date for the motions prior to a final hearing or may hear and rule on the motions at the final hearing before any evidence is presented. The ALJ may, at their discretion, set a briefing schedule for motions.
- (5) The ALJ shall have the authority to compel the attendance of witnesses, if requested by a party, by issuance of an administrative subpoena served by any process authorized by law.
- (6) At any final evidentiary hearing, each side shall have a total of three (3) hours to present its case and an additional one (1) hour in total for cross-examination of

witnesses. A request for additional time by any party must be made by motion prior to the evidentiary hearing. At the discretion of the ALJ, and upon a showing of good cause, additional time may be allowed in an equal amount for each side. If there is an intervenor, the intervenor will be allowed up to one (1) hour to present its case unless a party cedes additional time to the intervenor from that party's allotted time. The appealing party and any intervenor shall have the right to be represented by counsel; to call and examine witnesses; to introduce exhibits; to examine opposing witnesses on any relevant matter, even though the matter was not covered under direct examination; and to impeach any witness regardless of which party first called the witness to testify.

(b) *Evidence.* The ALJ may exclude from evidence any irrelevant, immaterial, or unduly repetitious evidence. The ALJ may, at their discretion, admit any other evidence determined to be probative, whether or not such evidence would be admissible in a trial in the courts of Florida.

(c) *Standard of Review.* Unless otherwise indicated in this subsection, the ALJ's review shall be limited to whether the appealing party was afforded procedural due process and/or whether the Director of Purchasing's determination was arbitrary, capricious, or unsupported by substantial competent evidence. Substantial competent evidence means such relevant evidence as a reasonable person might accept as adequate to support a conclusion. In cases involving determinations of a violation of Section 1-266, Broward County Code of Ordinances, relating to the Cone of Silence, the ALJ shall only determine whether there has been a violation of the Cone of Silence Ordinance. In cases involving the challenge of a final performance evaluation score pursuant to Section 21.14 of this Code, the ALJ shall determine whether the evaluation score is justified based on substantial competent evidence or whether the evaluation score should be rescinded, which determination shall be based solely on the written final performance evaluation (including items appended thereto), any written response or rebuttal to the draft or final evaluation submitted by the vendor, and any testimony supporting or challenging such documentary evidence.

(d) *Decisions.* Upon conclusion of the final hearing, the ALJ shall permit all parties to the appeal an opportunity to submit a proposed final order no later than fifteen (15) days after the conclusion of the hearing, unless the ALJ extends that time for good cause. Within thirty (30) days after the final hearing, the ALJ shall issue a final written order, which order shall include the ALJ's findings of fact (whether stipulated by the parties or based on the ALJ's findings) and conclusions of law. The ALJ shall uphold or deny the appeal, but may not grant any additional, alternative, or supplemental relief, whether or not such relief was requested by a party to the appeal. The ALJ shall not dictate any action to be taken by the Director of Purchasing.

(e) *Award of Costs.* In the event the ALJ denies the appeal, the final order shall include an award to the County of those costs and fees that the County incurred in defending the appeal, provided the ALJ may only award attorneys' fees to the County if the ALJ finds that the appealing party, or its counsel, knew or should have known that the appeal was not supported by either competent facts or colorable legal argument. The ALJ's final order shall require payment of any

awarded costs and fees within ten (10) days after the date of the final order. The appeal bond required by this Part shall be returned by the County after the appealing party pays the costs and fees awarded to the County, if any. If the appealing party fails to pay the costs and fees awarded, the County may execute on the appeal bond to obtain such payment, in addition to any other remedies available. For any appeal heard by an employee of the Office of the County Auditor, costs may be awarded if the employee finds the appeal was unsupported by any competent facts or colorable legal argument; any awarded costs must be limited to staff time of the Office of the County Auditor and any applicable County Agencies (in an aggregate amount not exceeding \$2,500) related to the appeal.

(f) *Right of Seek Review with Circuit Court.* A party may seek review of an ALJ's decision by the Circuit Court of the Seventeenth Judicial Circuit of Florida by timely filing a petition for *writ of certiorari* in accordance with the Florida Rules of Appellate Procedure. The record on appeal shall be the record established before the ALJ.

PART XIII. COUNTY BUSINESS ENTERPRISES AND SMALL BUSINESS ENTERPRISES

21.87. Policy.

The Board of County Commissioners has determined that the County shall, in accordance with all applicable laws, take action to increase the participation of County Business Enterprises and Small Business Enterprises in County procurements under this Code. Such efforts shall include, as appropriate, the use of annual goals for County Business Enterprises and Small Business Enterprises for the procurement of all classes of goods and services, goals on individual contracts, and reserves, as set forth in the Broward County Business Opportunity Act, Section 1-81, et seq., Broward County Code of Ordinances.

PART XIV. COMPLIANCE WITH ALL APPLICABLE LAWS

21.88. Law and Grant Requirements.

In any instance when compliance with this Code would result in a conflict with any state or federal law or with the terms of any grant, the County shall comply with such federal or state law or grant requirements, and the conflicting provision(s) of this Code shall not apply.

21.89. Rules of Construction; Applicability of Other Laws.

(a) *Interpretation.* This Code shall be construed and applied to promote its underlying purposes. All contracts awarded by virtue of this Code shall be governed by and construed under the laws and regulations of Broward County and Florida law.

(b) *Singular-Plural and Gender Rules.* In this Code, unless the context requires otherwise:

- (1) Words in the singular number include the plural, and those in the plural include the singular; and
- (2) Words of a particular gender shall include any gender and the neutral, and when the sense so indicates, words of the neutral may refer to any gender.

PART XV. SUPPLY MANAGEMENT

21.90. Relocation of Excess Supplies Within the County.

The Purchasing Division shall have the authority to authorize relocation of excess supplies within County Agencies and to set reasonable prices for reimbursement to the accounts of the relinquishing agency from the accounts of the acquiring agency.

21.91. Disposal of Surplus Personal Property.

(a) All personal property declared as surplus property by the Board or the Director of Purchasing shall be disposed of by the Director of Purchasing in accordance with the provisions of this Code and Sections 274.05 or 274.06, Florida Statutes.

(b) In addition to the provisions of this Code and Florida law, the following provisions apply to the sale or disposal of surplus personal property:

- (1) Except as provided in Section 21.91(b)(5) below, the Board must approve any donation or direct sale of any surplus personal property (for fair market value, without bid or auction) to a nonprofit civic, charitable, educational, scientific, or cultural association or to any entity that primarily serves the public health and welfare.
- (2) Except as provided in Section 21.91(b)(5) below, the Board must approve any direct sale or donation of surplus personal property (without bid, regardless of fair market value) to the State of Florida, any political subdivision as defined in Section 1.01, Florida Statutes, or other governmental entity.
- (3) The disposal of surplus personal property to private persons or entities shall be done by auction, quote, or sealed bid.
- (4) The Director of Purchasing may dispose of surplus personal property without commercial or market value in any manner that conforms with applicable law.

- (5) Surplus personal property with a current value of less than \$5,000 may be sold directly (without bid or auction) for fair market value; or may be donated, upon the approval of the Director of Purchasing, to (a) a nonprofit, civic, charitable, educational, scientific, or cultural entity; (b) an entity that primarily serves the public health and welfare; or (c) a school or governmental agency. The Director of Purchasing may not, in any fiscal year, donate or directly sell surplus property with a cumulative fair market value greater than \$5,000 to any one entity without prior approval from the Board. The Director of Purchasing shall report donations and sales made under this subsection not less than annually to the County Administrator and the County Auditor.
 - (6) Articles of clothing that become property of the County in accordance with applicable law may be sold by public sale or donated (including on an ongoing basis) to a nonprofit organization.
 - (7) All donation requests and requests for a direct nonauction, nonbid sale received from a nonprofit entity that primarily serves the public health and welfare or from a governmental entity must be on official letterhead stationery of the requesting nonprofit or governmental entity, as applicable, and must be addressed to the Director of Purchasing. The request must include an explanation of how the surplus personal property will be used for the promotion of the health, welfare, and public interest of the community. The request must also include a declaration that the requesting entity will not resell, otherwise dispose of, or permanently relocate the property outside of Broward County, excluding articles of clothing, for one (1) year after the date of the requesting entity's receipt of the property.
 - (8) No County employee who participates in the disposal, processing, or pricing of surplus property may purchase any such property.
- (c) In addition to Florida law and this Code, the following provisions apply to the sale or disposal of surplus County vehicles:
- (1) Vehicles valued at less than \$5,000 may be donated to government entities located within Broward County or may be sold by auction, sealed bid, quote, or via online government auction or public surplus websites.
 - (2) A request from a nonprofit entity for a vehicle donation will be processed in accordance with Section 19.12 of the Broward County Administrative Code (Motor Vehicles to Nonprofit Organizations). All nonprofit entities seeking grants-in-aid from the County must submit a Letter of Interest in response to a public notice by the County pursuant to Section 19.10 of the Broward County Administrative Code.
 - (3) Vehicles valued at more than \$5,000 must be sold at auction or through a competitive bidding process. The County reserves the right to award bids for surplus vehicles to local governmental entities within Broward County, even when

a local government bid is not the highest bid, provided that the Director of Purchasing determines the bid to be fair and reasonable.

PART XVI. DEFINITIONS

The words used in this Code shall have the meanings set forth below, unless the context in which they are used clearly requires a different meaning or a different definition is prescribed in the applicable part or section. These words may or may not be capitalized in this Code but shall have the same meaning whether or not capitalized.

Addenda or *Addendum* means additional directions or modifications to a solicitation that are issued as separate documents after issuance of the solicitation.

Agreement or *Contract* means all types of binding agreements, regardless of what they may be called, for the procurement or disposal of goods or services. In the case of an ITB, the ITB and response thereto may constitute the applicable agreement.

Amendment is a method of changing the terms and conditions or requirements of an agreement.

Award means the County's selection of a vendor to provide goods or services pursuant to a solicitation or other method of procurement set forth in this Code.

Awarding Authority means the Director of Purchasing or the Board, as applicable.

Board means the Board of County Commissioners of Broward County, Florida.

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

CBE means a County Business Enterprise as defined in the Broward County Business Opportunity Act, Section 1-81, et seq., Broward County Code of Ordinances.

CCNA means the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes.

Competitive Solicitation means an ITB, RFP, RLI, or RFQ.

Contract Administrator means the County employee designated to administer the agreement on behalf of the County.

County means the government of Broward County, including all its agencies, divisions, boards, and departments, but excluding all officers, departments, and agencies separately established by the Florida Constitution.

County Administrator means the head of the administrative branch of Broward County Government.

County Agency means any agency of the County.

Designee means a duly authorized representative of a person holding a superior position.

Director of Purchasing means the person holding the position established in Section 3.28 of the Broward County Administrative Code, as the head of the Purchasing Division of Broward County.

Emergency means a material threat to the public health, welfare, safety, life, property, or other substantial loss to the County, its residents, visitors, or employees.

Employee means an individual employed by the County who draws a salary or wages from the County, as well as any uncompensated individual performing personal services for the County.

Evaluation Committee means a group of individuals, appointed as provided in this Code or any regulations adopted pursuant to this Code, to evaluate responses to a solicitation and/or rank or "shortlist" those responses in a preferential order.

Excess Supplies means any supplies having a remaining useful life, but which are no longer required by the County Agency in possession of the supplies.

Final Performance Evaluation means an evaluation of a vendor's performance after final contract completion, termination, or final delivery of the contracted services.

Goods means commodities, supplies, materials, and any other personal property.

Governmental Agency means any agency of the federal, state, county, or municipal government.

Grant means the furnishing of financial or other assistance by the County or a County-authorized nonprofit provider to any person to support a program or activity; or the furnishing to the County of such assistance by another entity. It does not include an award to a for-profit organization, the primary purpose of which is to procure a product or service for the County, whether in the form of supplies or services; a contract resulting from such an award is not a grant but rather an agreement.

Invitation to Bid (ITB) means a form of Competitive Solicitation for which price is the determinative factor.

Mandatory Bid Amount means the dollar amount above which a Competitive Solicitation is required, unless an exemption is provided in this Code. The Mandatory Bid Amount is \$100,000.

Materially Unbalanced Response means a response to a solicitation that, in the best judgment of the Director of Purchasing and the Using Agency, creates a reasonable doubt that award to the vendor who submits such a response will result in the lowest ultimate cost to the County, or which is so mathematically unbalanced that it would require an advance payment by the County.

Mathematically Unbalanced Response means a response to a solicitation that contains a lump sum or unit bid for items that, in the best judgment of the Director of Purchasing and the Using Agency, does not reflect reasonable actual costs plus a reasonable proportionate share of the vendor's anticipated profit, overhead costs, and other indirect costs.

May denotes the permissive.

Must denotes the imperative.

Nonexpendable Supplies means all tangible supplies having a value of \$1,000 or more per unit and a normal life expectancy of one year or more, as well all other tangible supplies designated as subject to formal inventory control.

Nonprofit Entity means an entity organized for purposes other than generating profit and in which no part of the entity's profit is distributed to its members, directors, or officers.

OESBD means the Office of Economic and Small Business Development, or successor agency.

Open-End Contract means a contract whereby an indefinite quantity of supplies or services are to be procured over an identified time span, as and when needed or requested by the County.

Person means any entity, business, corporation, limited liability company, partnership, union, committee, club, organization, individual, or group of entities or individuals.

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to obtaining any goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

Purchase Order means a document that formalizes a purchase transaction with a vendor. Purchase Orders shall contain statements as to quantity, description, and price of the goods or services ordered, and may contain terms as to payment, discounts, date of performance, transportation, and other factors or suitable references pertinent to the purchase and its execution by the vendor.

Qualified List of Products means a list of products that meet the specifications for products that the County may require on an as-needed basis.

Qualified List of Vendors means a list of vendors the County determines are qualified to provide goods or services to the County on an as-needed basis.

Quotation Request means an informal request for prices from a vendor to provide goods or services at a cost under the mandatory bid amount, or an informal request to provide goods or services for a sole source or emergency procurement regardless of amount.

Regulation means a governmental agency's statement, designed to implement, interpret, or prescribe law or policy, or to describe organization, procedure, practice, or requirements.

Request for Letters of Interest (RLI) means a solicitation method used by the County when it wishes to obtain solutions to satisfy a need of the County with respect to a particular project or goal, and the County determines that it is appropriate to select a vendor for such purpose based upon quality, experience of the vendor, and other factors identified in the solicitation.

Request for Proposals (RFP) means a solicitation method used by the County when the County has determined what specific goods or services it wishes to procure, and has also determined that it is appropriate to procure such goods or services based on a combination of price, quality, experience of the vendor, or other factors identified in the solicitation.

Request for Qualifications (RFQ) means a solicitation method by which the County obtains information from vendors regarding their qualifications to provide goods or services to the County.

Response or Submission means the response or submission of a vendor to a solicitation.

Responsible (Vendor) means a vendor who is determined to have the capability in all respects to perform fully the requirements of a solicitation, as well as the integrity and reliability that will ensure good faith performance, as provided in Section 21.40(b) of this Code.

Responsive (Vendor) means a vendor who submits a response to a solicitation that the Director of Purchasing determines meets all requirements of the solicitation, as provided in Section 21.40(a) of this Code.

Services means the furnishing of labor, time, and effort by a vendor.

Shall denotes the imperative.

Should denotes the permissive.

Sole Brand means the only known brand or the only brand reasonably capable of fulfilling a particular procurement need of the County.

Sole Source means the only known vendor or the only vendor reasonably capable of providing the needed services or goods to the County.

Specifications means the description of the physical or functional characteristics of a good or service. Specifications may include a description of any requirement for inspecting, testing, or preparing goods or services for delivery. Specifications may also contain provisions for inclusion of factors that will lead to the final calculation of the lowest total cost.

Surplus Personal Property means surplus personal property as that term is defined by State and County law.

Two-Step Solicitation Method means a method of contracting whereby vendors are solicited through RFPs, RLI, and RFQs, and only those vendors shortlisted or prequalified by the County may submit responses to an ITB or RFP.

Using Agency means any agency of the County that requests and will utilize any goods or services procured under this Code.

Vendor means an actual or potential supplier of goods or services to the County.