

PROPOSED

RESOLUTION NO.

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE BROWARD COUNTY PROCUREMENT CODE, CHAPTER 21 OF THE BROWARD COUNTY ADMINISTRATIVE CODE ("ADMINISTRATIVE CODE"); AMENDING VARIOUS SECTIONS OF CHAPTER 21; MODIFYING CERTAIN PROCEDURAL MATTERS SUCH AS THE CALCULATION OF TIME, DELEGATION TO COUNTY AGENCIES, AND DURATION OF CONTRACTS; MODIFYING VARIOUS PROVISIONS RELATING TO METHODS OF PROCUREMENT AND COMPETITIVE SOLICITATIONS; MODIFYING CAUSES FOR DEBARMENT AND THE DURATION OF SUSPENSION; MODIFYING THE APPEAL PROCESS; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE ADMINISTRATIVE CODE, AND AN EFFECTIVE DATE.

WHEREAS, on February 23, 2021, the Broward County Board of County Commissioners ("Board") adopted a comprehensive rewrite of the Broward County Procurement Code, Chapter 21 of the Broward County Administrative Code ("Procurement Code"), effective May 1, 2021;

WHEREAS, the goals of the revised Procurement Code were to simplify and clarify the Procurement Code, codify certain practices, and reflect best practices; and

WHEREAS, the application of the revised Procurement Code since its implementation has revealed a few minor areas that would benefit from further revision, and the Director of Purchasing and County Administration recommend certain other

changes be made to further facilitate and expedite procurement processes, NOW,
THEREFORE,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF
BROWARD COUNTY, FLORIDA:

Section 1. Section 21.5 of the Broward County Administrative Code is hereby
amended to read as follows:

21.5. Exemptions from the Procurement Code.

...

(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;

...

Section 2. Section 21.8 of the Broward County Administrative Code is hereby
amended to read as follows:

21.8. General Provisions.

...

(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). If a deadline under this Code falls on a weekend or County holiday, then the deadline shall be on the next day that is not a weekend or County holiday.

...

Section 3. Section 21.11 of the Broward County Administrative Code is hereby amended to read as follows:

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~~ and to execute the agreement or contract, as applicable, 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 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~~

69 ~~goods or services from an existing county, municipal, state, federal, or nonprofit entity~~
70 ~~contract in any amount up to the Director of Purchasing's execution authority, provided~~
71 ~~that the Director of Purchasing determines that it would be more advantageous to the~~
72 ~~County for such goods and services to be purchased directly by a County Agency rather~~
73 ~~than through the Purchasing Division.~~ Such delegated purchases shall be subject to the
74 requirements of this Code and any administrative rules or regulations promulgated by the
75 County. The Director of Purchasing may only delegate such authority to a County Agency
76 if the Director of Purchasing determines that at least one individual within the County
77 Agency fully understands the existing rules, regulations, and requirements of this Code
78 and ~~such individual(s) have passed a written test or~~ completed training, or met any other
79 standard designated by the Purchasing Division designed to ensure such knowledge.
80 Each delegation of authority pursuant to this section shall be contained in a written
81 document, which shall include the required determinations referenced in this section.

82 Section 4. Section 21.27 of the Broward County Administrative Code is hereby
83 amended to read as follows:

84 **21.27. Purchases from Other Government Contracts.**

85 The Director of Purchasing may purchase goods or services (~~i.e., "piggyback"~~)
86 under any procurement contract (the "originating contract") held by a governmental
87 agency or nonprofit entity, or the County may enter into its own contract with the vendor
88 supplying goods or services under the originating contract if (a) the Director of Purchasing
89 determines the originating contract was competitively procured in accordance with
90 generally accepted standards of public procurement; (b) the originating contract expressly
91 permits such purchasing, or the governmental agency or nonprofit entity that awarded the

92 originating contract or the vendor who holds the originating contract (as applicable) allows
93 the County to purchase therefrom; and (c) the terms and conditions offered to the County
94 by the vendor do not materially deviate from the terms and conditions of the originating
95 contract. Nonmaterial deviations are permissible if they do not render the County's
96 purchase noncompetitive (e.g., if the same deviation in the originating contract would not
97 have materially altered the competitive nature of the procurement). The vendor is
98 permitted to offer, and the County is permitted to accept, terms and conditions including
99 price reductions that are more favorable to the County than the terms and conditions in
100 the originating contract, provided that the modified terms and conditions, if included in the
101 originating contract, would not have rendered the originating procurement
102 noncompetitive.

103 Section 5. Section 21.30 of the Broward County Administrative Code is hereby
104 amended to read as follows:

105 **21.30. Emergency Purchases.**

106 (a) The Director of Purchasing may make, or authorize County Agencies to
107 make, emergency purchases within or above the Director of Purchasing's award authority
108 when the Board, ~~or the County Administrator,~~ or the County Administrator's designee
109 determines there exists a threat to property or to the health, welfare, or safety of the
110 County's residents, visitors, or employees. All emergency purchases shall be made with
111 the maximum level of competition practically achievable under the circumstances. The
112 Director, or designee, of the County Office or Department requesting an emergency
113 procurement shall provide to the Director of Purchasing, prior to the issuance of a
114 purchase order, a ~~written~~ justification for the emergency purchase including a statement

of probable consequences if the emergency purchase is not made. ~~In addition, t~~The Director of Purchasing shall review the justification and, if the request is approved, provide and maintain a written explanation a response setting forth the parameters and basis for all the approved emergency purchases. Both the justification and the response must be documented in writing, but may be initially completed orally and documented in writing as soon as practical thereafter if the nature of the emergency makes contemporaneous documentation impractical.

(b) On a quarterly basis, tThe 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. On a quarterly basis, tThe Director of Purchasing shall, ~~within fifteen (15) days of the increase,~~ also report to the Board any increase exceeding ten percent (10%) of the original amount of the emergency purchase previously reported to the Board.

. . .

Section 6. Section 21.33 of the Broward County Administrative Code is hereby amended to read as follows:

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. Prior to the issuance of RFPs, RLIs, and RFQs with an anticipated total value of more than \$500,000 requires Board approval, the Purchasing Division shall provide written notice to the Board. If no County Commissioner requests, within five (5) business days after such written notice, that the solicitation not be issued without Board approval, the Purchasing Division may issue the solicitation; if any County Commissioner makes such a request, the proposed solicitation shall be presented to the Board for consideration.

Section 7. Section 21.42 of the Broward County Administrative Code is hereby amended to read as follows:

21.42. Procedures for RFPs, RLIs, 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)~~ (c) of this Code shall apply to the solicitation.

(b) *Withdrawal of Responses.* The provisions of Section 21.41(e) shall apply to RFPs, RLIs, and RFQs. In addition, a vendor may also withdraw its response upon written approval by the Director of Purchasing if the vendor demonstrates to the reasonable satisfaction of the Director of Purchasing that withdrawal should be permitted based upon the grounds stated in the vendor's written justification, and the Director of Purchasing determines in writing that withdrawal would not be contrary to the purposes of this Code.

...

Section 8. Section 21.46 of the Broward County Administrative Code is hereby amended to read as follows:

21.46. Reporting Requirements.

The Director of Purchasing shall post₁ on the Purchasing Division's public website₁ monthly reports as follows:

...

Section 9. Section 21.50 of the Broward County Administrative Code is hereby amended to read as follows:

21.50. Authority to ~~Reduce Scope of Construction Projects and Negotiate~~ Bids.

The County may negotiate an adjustment of the scope or requirements of an ~~construction project~~ ITB in order to bring the contract price within the amount of available funds if: (1) all prices offered by vendors for the ~~construction project~~ ITB exceed available funds, as determined in writing by the ~~County Administrator~~ Director of Purchasing, based upon a recommendation by the Using Agency; (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)~~ (3) 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.

Section 10. Section 21.53 of the Broward County Administrative Code is hereby amended to read as follows:

183 **21.53. Duration of Contracts.**

184 (a) *Five-Year Limitation.* Unless otherwise provided by law or excepted herein,
185 ~~no~~ a County contract duration shall not exceed five (5) years in duration, inclusive of any
186 renewals or extensions provided for in the contract, without the express approval of the
187 Board. This five-year limitation shall not apply to the following:

188 (1) Any additional extension period expressly provided for in the original
189 contract to avoid a gap in services, provided such additional extension
190 period does not exceed twelve (12) months.

191 (2) An award of an ITB by the Director of Purchasing under Section 21.47(b)(2),
192 including the exercise of any extensions or renewals provided for in the ITB
193 as advertised, provided the notice to the Board under Section 21.47(b)(2)
194 prominently notes any duration exceeding five (5) years.

195 (3) Any contract award, renewal, or extension within the authority of the
196 Director of Purchasing under Section 21.47(b)(3).

197 . . .

198 (d) *Extension/~~Renewal~~ of ~~Open-Ended~~ Contracts.* ~~Open-ended~~
199 Notwithstanding the limitation stated in Section 21.53(a) above, any contracts shall, when
200 practical, provide for an extension or renewal of the contract may be extended by the
201 Director of Purchasing for a specified time period, not to exceed twelve (12) months in
202 the aggregate, upon mutual consent of the County and the vendor if the Director of
203 Purchasing determines such extension is necessary to competitively solicit a new contract
204 or to avoid a gap in critical services, provided the total cost to the County for such
205 aggregate extension period does not exceed \$500,000 and provided the Purchasing

Division reports at least quarterly to the Board on the exercise of any extension under this section and the status of the applicable competitive solicitation. ~~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.~~

Section 11. Section 21.75 of the Broward County Administrative Code is hereby amended to read as follows:

21.75. Cause for debarment.

A party may be debarred for any of the following:

...

(b) When a party, or any 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 business integrity or business honesty that seriously and directly affects their present responsibility as determined by the Director of Purchasing;

...

Section 12. Section 21.78 of the Broward County Administrative Code is hereby amended to read as follows:

21.78. 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 21.79 of this Code. Suspensions may not exceed ~~three (3)~~ twelve (12) 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.

Section 13. Section 21.81 of the Broward County Administrative Code is hereby amended to read as follows:

21.81. 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;~~

...

Section 14. Section 21.88 of the Broward County Administrative Code is hereby amended to read as follows:

21.88. Hearings; Decisions.

...

(d) ALJ 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 the ALJ 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~~ ALJ order shall include an award to the County of those costs and fees that the County incurred in defending the appeal, including ALJ fees and costs, 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, including as may be reduced by the final written action of the County Administrator under Section 21.88(f), if applicable. If the appealing party fails to pay the costs and fees awarded, as so modified, 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) *Effect of ALJ Decisions; Right of to Seek Review with Circuit Court.*

(1) *For appeals of matters under Section 21.81(a) or 21.81(b):*

- a. The ALJ's decision shall constitute a recommended order, which shall be subject to final action by the County Administrator or the Board as provided herein.
- b. The County Administrator may accept the recommended order, or may reject or modify it, based upon a review of the record and issuance of a statement documenting the basis of the County Administrator's determination, provided that the County Administrator may not award costs or fees above any amount awarded by the ALJ's decision. The County Administrator shall, within thirty (30) days after the ALJ's decision, provide written notice to the Board of the County Administrator's intended action. If no County Commissioner objects to the intended action within five (5) business days after receiving said notice, the County Administrator shall issue the written final decision; if any County Commissioner objects within five (5) business days after receiving said notice, the County Administrator will present the item to the Board for its consideration and its final action. At its sole discretion, the Board may approve, modify, or reject the County Administrator's written decision, and is not bound by any prior finding of fact, conclusion of law, or any other determination by the County Administrator; notwithstanding the foregoing, the Board may also provide any other direction to the County Administrator and the Director of Purchasing as the Board determines is in the best interest of the County.

c. The ALJ's and the County Administrator's decisions and orders in these matters are nonfinal and nonbinding and are not subject to further appeal or review unless and until the final action is taken to award the solicitation that is the subject of the appeal, in which event the final action on the solicitation may be reviewed by an appropriate direct action in the Circuit Court of the Seventeenth Judicial Circuit of Florida in accordance with the Florida Rules of Civil Procedure.

(2) For appeals of matters under Section 21.81(c), 21.81(d), or 21.81(e):

a. The ALJ's decision shall be final and binding on the parties, subject to review in accordance with Section 21.88(f).

b. ~~To the extent any decision of a~~An ALJ decision is subject to review under applicable law, a party may seek review of an ALJ's decision by filing a timely ~~action~~ writ of certiorari in the Circuit Court of the Seventeenth Judicial Circuit of Florida in accordance with the Florida Rules of Appellate Procedure. The record on appeal shall be the record established before the ALJ.

Section 15. Severability.

If any portion of this Administrative Code Resolution is determined by any court to be invalid, the invalid portion will be stricken, and such striking will not affect the validity of the remainder of this Administrative Code Resolution. If any court determines that this Administrative Code Resolution, in whole or in part, cannot be legally applied to any individual, group, entity, property, or circumstance, such determination will not affect the

applicability of this Administrative Code Resolution to any other individual, group, entity, property, or circumstance.

Section 16. Inclusion in the Broward County Administrative Code.

It is the intention of the Board of County Commissioners that the provisions of this Administrative Code Resolution become part of the Broward County Administrative Code as of the effective date. The sections of this Administrative Code Resolution may be renumbered or relettered and the word "resolution" may be changed to "section," "article," or such other appropriate word or phrase to the extent necessary in order to accomplish such intention.

Section 17. Effective Date.

This Administrative Code Resolution is effective upon adoption.

ADOPTED this day of , 2023. **PROPOSED**

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

By: /s/ Fernando Amuchastegui 05/23/2023
Fernando Amuchastegui (date)
Senior Assistant County Attorney

By: /s/ René D. Harrod 05/23/2023
René D. Harrod (date)
Chief Deputy County Attorney

FA/cv
Procurement Code Amendments Reso
05/23/2023
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Coding: Words ~~stricken~~ are deletions from existing text. Words underlined are additions to existing text.