

CHAPTER 22. PROCUREMENT¹

Sec. 22.1-100. Short title.

This chapter shall be known as the "Alachua County Procurement Code" or the "code."

ARTICLE I. GENERAL PROVISIONS

Part A. Purposes, Construction, and Application

Sec. 22.1-101. Purposes, rules of construction.

- (1) *Interpretation.* This code shall be construed and applied to promote its underlying purposes and policies.
- (2) *Purposes and policies.* The underlying purposes and policies of this code are:
 - (a) To simplify, clarify, and modernize the law governing procurement by this county;
 - (b) To permit the continued development of procurement procedures and practices;
 - (c) To improve the consistency of the procurement procedures among the various county departments and agencies;
 - (d) To provide for increased public confidence in the procedures followed in public procurement;
 - (e) To ensure the fair and equitable treatment of all persons participating in the county's procurement process;
 - (f) To provide increased economy in county procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the county;
 - (g) To foster effective broad-based competition;
 - (h) To ensure compliance with the county's small business programs;
 - (i) To provide safeguards for the maintenance of a procurement system of quality and integrity; and
 - (j) To obtain in a cost-effective and responsive manner the supplies, services, and construction required by county agencies in order for those agencies to better serve this county's businesses and residents.
- (3) *Singular-plural and gender rules.* In this code, unless the context requires otherwise:
 - (a) Words in the singular number include the plural, and those in the plural include the singular; and
 - (b) Words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

Sec. 22.1-102. Requirement of good faith.

This code requires all parties involved in the negotiation, performance, or administration of county contracts to act in good faith.

Sec. 22.1-103. Application of this code.

- (1) *General application.* This code applies only to contracts solicited or entered into after the effective date of Ordinance No. 2020-01.
- (2) *Application to county procurement.* This code applies to every procurement except as otherwise stated herein, of the Alachua County Board of County Commissioners or any governmental body under the control or supervision of said board acting in any capacity. Nothing in this code or in procedures promulgated hereunder shall prevent the county from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.
- (3) *Code to be liberally construed.* This code shall be liberally construed in order to effectively carry out the purposes hereof, which are deemed to be in the best interest of the public health, safety, and welfare of the citizens and residents of the county.

Sec. 22.1-104. Severability.

If any provision of this code or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Sec. 22.1-105. Specific repealer.

Preceding acts and all other acts and parts of acts inconsistent herewith are hereby repealed.

Part B. Determinations.

Sec. 22.1-201. Determinations.

Written determinations required by this code shall be retained in the appropriate official contract file in the office of procurement.

Part C. Definitions of Terms Used in this Code

Sec. 22.1-301. Definitions.

The words defined in this section shall have the meanings set forth below whenever they appear in this code, unless:

- (1) The context in which they are used clearly requires a different meaning; or
- (2) A different definition is prescribed for a particular Article or provision.

Best value procurement means a method that emphasizes value over price. It recognizes that the best value may not be the lowest cost. It may be an assessment of the return that can be achieved based on the total life cycle cost of the item; may include an analysis of the functionality of the item; may use cost-benefit analysis to define the best combinations of quality, services, time, and cost considerations over the useful life of the acquired item.

Bidder or offeror means one who submits a response to an invitation to bid or one who makes an offer in response to a solicitation.

Board means the Alachua County Board of County Commissioners.

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

Business day means any day in which normal county business operations are conducted. This is considered to be Monday through Friday from 8:30 a.m. to 5:00 p.m. local time, and excludes weekends and county observed holidays.

Change order means a written order amending the scope or specification, the price, the time of performance, or correcting errors, omissions, or discrepancies in a contract or purchase order.

Commodity means something useful that can be turned to commercial advantage; something that can be processed and resold.

Construction means the process of building, altering, renovating, improving, or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property.

Contract means all types of county agreements, regardless of what they may be called, including purchase orders for the procurement or disposal of supplies, services, or construction.

Contract amendment means any written alteration in scope, specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract. To be effective, contract amendments must be executed by all parties to the contract.

Contractor means any individual, business or legal entity having a contract with the county.

County means the Alachua County Board of County Commissioners, and persons duly authorized to act on behalf of the board.

County Manager means the Alachua County Manager. The county manager may delegate specific authority provided by this code in accordance with section 22.2-203.

Data means recorded information, regardless of form or characteristic.

Delivery means the physical transfer of possession from one person to another, as from a carrier, vendor, or contractor to the purchaser.

Designee means a duly authorized representative.

Electronic means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Employee means an individual drawing a salary from the county, whether elected or not, and any non-compensated individual performing personal services.

Governmental body means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch of the County.

Grant means the furnishing of assistance, whether financial or otherwise, to any person to support a program.

May denotes the permissive.

Office of procurement means the office identified by the County Manager as having the primary responsibility to procure supplies, services and construction.

Owner direct purchase means the procurement of supplies by the county directly from the source for use in a construction project, thus reducing the project's cost to the county by the amount that would have been paid for

sales taxes had the supplies been purchased by the contractor. All warranty of supplies and workmanship from the contractor remain intact.

Headquartered means the location where an organization, company, or group has its principal office as designated in its articles of incorporation or other initial filing with the Florida Division of Corporations until an annual report has been filed, and thereafter as designated in the annual report, and the Businesses principal office is a bonafide establishment for the transaction of business on a day-to-day basis not just a PO Box.

Person means any business, individual, union, committee, club, other organization, or group of individuals.

Price means the sum or amount of money or its equivalent for which anything is bought, sold or offered for sale.

Procedure means the detailed series of related activities that must be completed, in the order in which they must be done, to accomplish a given task.

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supplies, services, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. This definition does not include real property, which is addressed in Article VI of this code.

Procurement manager means the employee designated by the County Manager as the administrator of the procurement office.

Procurement agent means any person duly authorized to enter into and administer purchase orders and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

Procurement card program. This program allows for county owned credit cards to be issued to employees and allows for an efficient, cost-effective method of purchasing or paying for small-dollar items as well as high-volume purchases.

Professional services means services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training or direct assistance.

Public notice means the distribution or dissemination of information using methods that are described in procedures or as otherwise required by law. Such methods may often include publication in newspapers of general circulation, posting in public areas, electronic or paper mailing lists, and web site(s) designated by the county and maintained for that purpose.

Purchase order means that document to a vendor formalizing all of the terms and conditions for a specified need, and may include, but not be limited to, the technical description of the requested item, scope, price, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this code. Purchase orders may be amended by change orders.

Purchasing categories, annual threshold amounts – the following purchasing categories are:

1. *Category 1 – 0.00 - \$125,000.00*
2. *Category 2 - \$125,001.00 - \$200,000.00*
3. *Category 3 - \$200,001.00 and greater*

Regulation means a statement by the board of county commissioners having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or practice.

Responsible bidder or offeror means a bidder or offeror who has the capability, in all respects, to perform fully the contract requirements, and the experience, integrity, perseverance and reliability, capacity, facilities, equipment and credit which will assure good faith performance.

Responsive bidder or offeror means a bidder or offeror who submitted a bid, proposal or quote which

conforms in all material respects to the solicitation document.

Services means the furnishing of labor, time, or effort by a contractor, rather than furnishing supplies or construction. This term shall not include employment agreements or collective bargaining agreements.

Shall denotes a requirement.

Signature means a manual or electronic identifier, in accordance with Florida statutes, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.

Solicitation means an invitation to bid, a request for proposal, telephone calls or any means used to obtain bids, proposals or quotes for the purpose of entering into a contract or purchase order.

Specification means a precise description of the physical or functional characteristics of a supply service, or construction item of what the purchaser seeks to buy from a responsible and responsive bidder or offeror. May be referred to as scope of work, scope of services, scope, or statement of work (SOW).

Spend management means the process of collecting, cleansing, classifying, and analyzing expenditure data from all sources within the organization (i.e., procurement card, e-procurement systems, et cetera). The process analyzes the current, past, and forecasted expenditures to allow visibility of data within the organization at various levels, for example, by supplier, commodity, service, or by department. Spend analysis provides answers to such questions as what was bought, when was it bought, where was it purchased, how many suppliers were used, how much was spent with each supplier, and how much was paid for the item.

Subcontractor means any business or entity employed to perform part of a contractual obligation under the control of the principal contractor.

Supplier means the person or business actually providing the supply, service or construction required by the contract.

Supplies means all property, including but not limited to goods, equipment, materials, printing, insurance, and leases of personal property, excluding real property.

Utility means an organization supplying the community with electricity, gas, water, sewerage or internet.

Using Agency means any agency, board, committee, department, office, elected constitutional office, Judicial Office, special district or other governmental entity that uses the Alachua County Procurement staff to provide procurement services for the Using Agency. Unless otherwise agreed to in writing by the Board and the Using Agency, all procurement services performed by the Alachua County Procurement staff for a Using Agency shall use the Alachua County Procurement Code, as may be amended from time-to-time, except that in all instances where the Alachua County Procurement Code identifies the Board, the County Manager, the Alachua County Procurement Manager, or some other County employee as authorized to approve or award a procurement, or to sign a contract, the Code shall be interpreted to mean the applicable Using Agency's board, officer, employee or other person identified in writing by the Using Agency.

Vendor means a supplier or seller of supplies, services, and construction.

Written or in-writing means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Part D. Public Access

Sec. 22.1-401. Public access to procurement information.

Procurement records shall be governed in accordance with the public record laws of the State of Florida.

Sec. 22.1-402. Authorization for the use of electronic transmissions.

The use of electronic media, including acceptance of electronic signatures, is authorized by this code provided said use is consistent with the requirements of the Florida Statutes and regulations for use of such media. All approved media shall provide for:

- (1) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
- (2) Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

ARTICLE II. PROCUREMENT ORGANIZATION

Part A . Organization

Sec. 22.2-201. County Manager Authority.

Consistent with the County Charter, authority for selecting, directing and managing the procurement manager resides solely with the County Manager. Any authority and duties implied or delegated to the procurement manager in this code are subject to the oversight and final determination of the County Manager or the County Manager's designee.

Sec. 22.2-202. Purpose of office of procurement.

- (1) *Principal contracting office of the county.* The procurement manager shall be responsible for implementing, interpreting, applying and enforcing this code, subject to the limitations set forth in section 22.2-201.
- (2) *Power to adopt operational procedures.* Consistent with the provisions of this code, the County Manager may adopt operational procedures governing the functions of the office of procurement and all using agencies as related to the procurement needs of the county.
- (3) *Collection of data concerning public procurement.* The office of procurement may coordinate efforts in gathering and preparing statistical data concerning the procurement, usage, and disposition of all supplies, services, and construction, and employ such trained personnel as may be necessary to carry out this function. Using agencies shall furnish such reports as may be required concerning usage, needs, and stocks on hand, and prescribe forms to be used by the using agencies in requisitioning, ordering, and reporting of supplies, services and construction.
- (4) *Duties.*
 - (a) Shall procure or supervise the procurement of all supplies, services, and construction needed by the county;
 - (b) May sell or trade supplies belonging to the county, not disposed of as identified in Article VIII of this code.
 - (c) May establish and maintain programs for the inspection, testing and acceptance of supplies, services, and construction.
 - (d) May ensure compliance with this code and implementing procedures by reviewing and monitoring procurements conducted by any procurement agent, using agency or employee.
 - (e) May establish standardized programs for supplies, services and construction.

- (f) Shall practice best value procurement.
- (g) Shall establish standard formats for county solicitations.
- (h) May establish spend management techniques so that the county's procurement volumes are maximized so as to minimize cost.
- (i) Shall administer and maintain a countywide contract administration program.
- (j) Shall implement the county's small business program into the procurement system.
- (k) Shall administer the procurement card program.

Sec. 22.2-203. Signature authority.

- (1) The County Manager or designee shall have the authority to:
 - a) Approve and award bids/solicitations in the amount of Category 2 or less,
 - b) Approve, execute and modify all Contracts, change orders, contract amendments and contract renewals when the cumulative total of the Contract, along with all change orders and amendments to the Contract, is the amount of Category 2 or less.
 - c) Approve and execute change orders and contract amendments to any Category 3 Contract that was previously approved by the BOCC, provided that the cumulative total amount of the change orders or contract amendments do not exceed \$200,000.00 and

the Board has approved the budget appropriations necessary to fund the change order or contract amendment. The authority delegated to the County Manager under this subsection for the renewal of Category 3 Contracts is addressed in subsection 22.2.203 (2) of this code.
- (2) The County Manager or designee shall have the authority to approve the renewal of Category 3 Contracts that were competitively procured pursuant to section 22.3-203 or section 22.3.204 provided: (i) the Contract expressly provides for the renewal; (ii) at least 45 calendar days prior to renewing a Contract, the County Manager provides a report to the Board, in a regularly scheduled meeting, of all of the Category 3 Contracts that the County Manager intends to renew for the coming fiscal year; (iii) the Board does not overrule the County's Manager's intent to renew a Contract by majority vote of the Board within 45 calendar days of receipt of the report; and (iv) the Contract renewal is funded by annual budget appropriation approved by the Board. The report must provide the following information regarding each Contract that the County Manager or designee intends to renew: (i) the name of the vendor/contractor; (ii) a general description of the scope of the Contract; (iii) the annual contract amount/not-to-exceed amount; (iv) the date on which the County first entered into the Contract with the vendor/contractor; (v) the length of the proposed renewal term (e.g., one year, two years; etc.); and (iv) the number of renewal options remaining under the Contract.
- (3) The County Manager or designee shall have the authority to approve Contract renewals which do not alter the original term, inclusive of contract renewal terms, the annual price, or scope of service, regardless of contract amount, not to exceed amount, or contract amount escalator, provided: (i) that by no later than March 1st of each year, the County Manager provides a report to the Board in a regularly scheduled meeting of all Contracts that the County Manager intends to renew for the coming fiscal year; (ii) the Board does not overrule the County's Manager's intent to renew a Contract by majority vote of the Board taken at the first regular meeting in April of each year; and (iii) the Contract renewal is funded by annual budget appropriation approved by the Board. The report must provide the following information regarding each Contract that the County Manager or designee intends to renew: (iv) the name of the vendor/contractor; (v) a general description of the scope of the Contract; (vi) the annual contract amount/not-to-exceed amount; (vii) the date on which the County first entered into the Contract with the vendor/contractor; (viii) the length of the proposed renewal term (e.g., one year, two years; etc.); and (ix) the number of renewal

options remaining under the Contract.

- (4) Purchase orders or Contracts previously approved by the board of county commissioners whose amounts were reduced by deductive change order may be increased by the County Manager, or designee, to any amount previously approved by the board of county commissioners.
- (5) Bid awards, Contracts, purchase orders or change orders in Category 3 shall be placed before the board of county commissioners for approval except as identified in Article II of this code.
- (6) Purchases for utility bills or regulatory fees are exempt from board approval provided that the purchases do not exceed the appropriations approved by the board of county commissioners.
- (7) The Using Agency has the sole and exclusive authority to approve and/or award every type of procurement, and sign all contracts, procured by the Alachua County Procurement staff on the Using Agency's behalf unless otherwise agreed to in writing by the Using Agency.
- (8) Purchase orders or Contracts within the County Manager or designee signature authority may require Board of County Commissioners approval.

Sec. 22.2-204. Authority to contract for legal services.

Except for bond counsel, which will be procured in accordance with section 21.42(c) of the Code, the County Attorney shall consult with the County Manager before presenting any contract for special attorney to the Board for approval or contracting for legal services.

ARTICLE III. SOURCE SELECTION

Part A. Definitions.

Sec. 22.3-101. Definitions of terms used in this article.

Auction means a public sale in which Supplies are sold to the highest Bidder.

Cost-reimbursement contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this code, plus an allowed fee.

Competitive sealed bidding means the preferred method for procuring supplies, services, and construction for public use in which the award is made to the responsive and responsible bidder with the lowest price, based solely on the response to the criteria set forth in the invitation to bid. This method does not include discussions or negotiations with bidders.

Competitive sealed proposal means a formal solicitation method requiring vendors to provide a detailed proposal in response to the specifications, which may be more general in nature, and may result in a contractual agreement.

Emergency purchase means a purchase made due to an unexpected and urgent request where there is a reasonable risk of harm to public health, welfare or safety, to protect the assets of the county, to ensure compliance with contractual or legal deadlines, or maintain operational effectiveness or efficiency of the county. All purchases will be in accordance with procedures as set forth in the procurement procedures manual.

Established catalog price means the price included in a catalog, Price list, schedule, or other form that:

- a) Is regularly maintained by a manufacturer or contractor.
- b) Is either published or otherwise available for inspection by customers.

- c) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

Invitation to bid (ITB) means all documents, whether attached or incorporated by reference, used for formally soliciting competitively sealed Bids. Once bids are opened by the county, changes in scope or price are not allowed.

Invitation to negotiate (ITN) means a formal solicitation method requiring vendors to provide a detailed competitively sealed Proposal in response to the specifications, which may be more general in nature. Once opened, the county may negotiate agreements with one or all offerors simultaneously to achieve best value. This method allows for negotiation in scope, price and delivery.

Multi-step bidding means a formal solicitation method of source selection involving two competitive steps, combining the elements of both invitation for bids and request for proposals. The first step may require the submission of technical and price proposals with only the technical proposals being evaluated and scored. The second step involves the opening of price proposals of those firms who have achieved the highest technical scores.

Piggyback means a form of intergovernmental cooperative purchasing in which an entity will extend the pricing and terms of a contract entered into by another entity. Terms not altering the scope may be negotiated and the price may be reduced by negotiation.

Procurement card means a payment method whereby internal customers are empowered to deal directly with suppliers for purchases using a credit card issued by a bank or major credit card provider.

Procurement description means the words used in a solicitation to describe the supplies, services, or construction to be procured, and includes specifications attached to, or made a part of the solicitation.

Proposal means a document submitted by an offeror in response to some type of formal solicitation to be used as a basis for negotiation or for entering into a contract.

Request for applications (RFA) formal solicitation means a non-binding method of solicitation for potential financial awards to provide services to the community on behalf of the county.

Request for information (RFI) means a non-binding method whereby a jurisdiction publishes its need for input from interested parties for an upcoming solicitation. A procurement practice used to obtain comments, feedback, or reactions from potential responders (suppliers, contractors) prior to the issuing of a solicitation. Generally, price or cost is not required. Feedback may include best practices, industry standards, technology issues, et cetera.

Request for proposals (RFP) means all documents, whether attached or incorporated by reference, utilized to solicit competitive sealed proposals from potential providers for supplies and services.

Request for qualifications (RFQu) means a formal solicitation method of non-binding solicitation of the county's specific needs requiring detailed proposals in response to identify the most qualified providers. Generally, price or cost is not required.

Request for quotes (RFQ) means an informal solicitation where oral or written quotes are obtained from vendors without formal solicitations. However, such opportunities may be posted on the county's webpage as part of its outreach to small vendors.

Reverse auction means an online auction in which sellers bid against each other to win a buyer's business. They are typically used to purchase commodities from multiple pre-qualified providers. They also referred to as e-auctions.

Single sourcing means a procurement decision whereby purchases are procured from one source because of standardization, warranty, patent, compatibility, exclusive rights, or other factors including, but not limited to, the continuation of previous services or additional service even though other competitive sources may be available.

Sole source means a situation created due to the inability to obtain competition. May result because only one vendor or supplier possesses the unique ability or capability to meet the particular requirements. This decision

may also be based on, copyright or proprietary technology.

Part B. Methods of Source Selection

Sec. 22.3-201. Generally.

Unless otherwise required by the Florida Statutes or exempted by this code, procurements shall be awarded by one of the following methods. When a procurement involves an expenditure of state or federal assistance or contract funds, state or federal laws and regulations which are mandatory and applicable shall supersede and control over any provision of this code that are inconsistent with said state or federal laws and regulations.

Sec. 22.3-202. Small purchases.

Any procurement not exceeding Category 1 may be made in accordance with small purchase procedures as set forth in the Procurement Procedures Manual.

Sec. 22.3-203.

Competitive sealed bidding.

Any procurement exceeding Category 1 shall be awarded by competitively sealed bidding with public announcement except as otherwise provided in this code, or as required by law.

Sec. 22.3-204. Alternative/other source selection.

To the extent that it would not be inconsistent with Florida Statutes, when it is determined that the use of competitive sealed bidding is either not practicable or not in the best interests of the public the following methods of source selection may be utilized in accordance with procedures as set forth in the procurement procedures manual.

- (1) Competitive sealed proposal (RFP).
- (2) Established catalog pricing.
- (3) Invitation to negotiate (ITN).
- (4) Multi step bidding.
- (5) Piggybacking.
- (6) Purchase from auctions.
- (7) Request for applications.
- (8) Request for information.
- (9) Request for qualifications.
- (10) Reverse auctions.

Sec. 22.3-205. Special procurement.

Special procurements may be initiated without competition, when it is determined that an unusual or unique situation exists that makes the application of competitive sealed bidding not financially or operationally advantageous, or not in the county's best interest. Any special procurement under this section shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the

procurement and for the selection of the particular contractor shall be included in the solicitation file.

Part C. Exemptions

Sec. 22.3-301. Exemptions from purchase orders.

Unless otherwise required by Florida Statute or regulation, the following supplies, services, and construction need not be procured through the office of procurement, and may be paid through a procurement card, reimbursement or check request directly to the Alachua County Clerk of the Court and are not subject to limitations identified in Article II, section 22.2-203 (signature authority), but shall nevertheless be procured as set forth in the procurement procedures manual and within board appropriated funds. A purchase order may be required for any purchase order exempt item which shall be subject to the limitations identified in Article II, section 22.2-203 (signature authority) and with procedures as set forth in the procurement procedures manual.

- (1) Purchases of perishable items such as fresh vegetables, fruit, fish, meat, eggs, and milk;
- (2) Administrative hearing officer services;
- (3) Advertisements to include but not limited to, radio, newspapers, magazines, professional organizations, trade shows, television, websites and any other related media;
- (4) Airline tickets;
- (5) Brokerage and actuarial services;
- (6) Cable TV, 2-way radio contracts, county-wide phone system and internet services;
- (7) Cellular telephone services in accordance with the county's cellular telephone policies and procedures;
- (8) College tuition, educational fees and materials;
- (9) Court orders and other court ordered disbursements;
- (10) Court reporter services;
- (11) Expert witness fees and/or services; also includes travel in accordance with Florida Statutes;
- (12) Instructors, lecturers, presenters and trainers' fees and materials;
- (13) Insurance;
- (14) Interpreter services;
- (15) Membership dues;
- (16) Notary public applications;
- (17) Petty cash purchases in accordance with established county procedures;
- (18) Purchases of \$3,500.00 or less;
- (19) Purchases covered by approved public purpose statements in accordance with established county procedures;
- (20) Social services indigent care through a board adopted program;
- (21) Subscriptions, subscription renewals, audio, audio disk, audio tape, video, video disk, video tape, film, books, e-books periodicals or similar materials;
- (22) Travel expense in accordance with the county's travel policy and procedures;
- (23) Refunds;
- (24) Utility bills and Regulatory Fees.

Sec. 22.3-302. Exemptions from the source selection process.

Unless otherwise required by Florida Statute, the following supplies, services, and construction need not be procured through the source selection process identified in Article III. A competitive procurement process for any exempt item may be required.

- (1) All exempt purchases as identified in section 22.3-301 (exemptions from purchase orders);
- (2) All supplies or services purchased at a price established by the Florida Department of Management Services, or at a price equal to or less than the price established by the state agency;
- (3) All supplies or services, purchased from another unit of government;
- (4) All purchases of real property, real estate brokerage, options of title or abstracts of title for real property, title insurance for real property, and other related costs of acquisition, rental, or sale of real property.;
- (5) All purchases of used equipment having a value greater than \$3,500.00; however, each such purchase shall be supported by one independent equipment appraisal report and an equipment appraisal report from the county's fleet manager justifying that the price of the equipment is in the best interest of the county.
- (6) Supplies, services or construction purchased under an annual or other time contract;
- (7) Professional services as defined in, and procured according. to § 287.055, Florida Statutes, commonly referred to as the "Consultants Competitive Negotiation Act".
- (8) Medical services or Medications.
- (9) Legal services;
- (10) All professional services that are not required to be procured in accordance with § 287.055, Florida Statutes, and whose estimated cost does not exceed Category 1.
- (11) Owner direct purchases (ODP);
- (12) Procurement of supplies or services under contract with federal, state, municipal governments, any other governmental agency, political subdivision or cooperatives, including cooperatives that the county participates in accordance with Article X, section 22.10-201 (cooperative purchasing authorized) provided the vendor extends the same terms and conditions of the contract to the county;
- (13) Small Business Enterprise services and products that are less than \$25,000.00.
Must be registered as an Alachua County Small Business Enterprise.
- (14) Ambulance billing;
- (15) Artistic services and works of art;
- (16) Emergency procurements in accordance with the procurement procedures manual;
- (17) Lobbying services;
- (18) Odd-lots and closeout materials;
- (19) Postage;
- (20) Purchases made with a county issued credit card in accordance with the procurement card program policies and procedures;
- (21) Purchases of supplies or services from a non-profit organization or charitable youth organization made in accordance with § 255.60, Florida Statutes;
- (22) Software packages for computers approved by the county's information and telecommunications services department;

- (23) Test items when it is probable that such purchases will result in formulating future bid specifications for such items;
- (24) Title searches/title insurance;
- (25) Veterinarian services;
- (26) Recovered materials as defined in § 403.703(28), Florida Statutes, as may be amended from time to time;
- (27) Single source procurements in accordance with the procurement procedures manual;
- (28) Sole source procurements in accordance with the procurement procedures manual.

Part D. Cancellation of Solicitations

Sec. 22.3-401. Cancellation of invitations to bid, or other solicitations.

An invitation to bid, or other solicitation may be cancelled, or rejected in whole or in part, as may be specified in the solicitation, when it is in the best interests of the county. The reasons therefor shall be made part of the solicitation file. This includes the right to reject the bids/proposals of any respondent due to, but not limited to, the following reasons:

- (1) The bid or proposal is deemed non-responsive;
- (2) Respondent deemed not responsible:
- (3) Respondent is on the convicted vendor list ("debarred") maintained by the Florida Department of Management Services or its successor-in-interest;
- (4) Respondent is on the discriminatory vendor list maintained by the Florida Department of Management Services or its successor-in-interest;
- (5) Respondent has been debarred by any other state or the federal government;
- (6) Respondent is a "scrutinized company" under § 287.135, Florida Statutes;
- (7) Respondent is suspended in accordance with section 22.9-102 (authority to suspend) of this code; or
- (8) Any other reason determined to be in the best interest of the county.

Part E. General Solicitation Requirements

Sec. 22.3-501. General requirements in solicitations.

- (1) *Public notice.* Unless specific notice requirements are imposed by Florida Statute, in which case those specific notice requirements shall be followed, adequate public notice of the solicitations shall be given a reasonable time prior to the date set forth therein for the opening.
- (2) *Receipt/securing of solicitation responses.* Procedures will be established to ensure that solicitation responses are received, secured and protected until the specified due date.
- (3) *Waiving of irregularities.* Minor irregularities may be waived or the offeror may be allowed to correct them. Minor irregularities are matters that do not provide a competitive advantage to one offeror over another offeror.

Examples include, but not limited to, failure to: return the number of signed bids required by the bid

package; sign the bid, provided that the unsigned bid is accompanied by other documents indicating the bidder's intent to be bound (e.g., a signed cover letter or a bid guarantee); complete one or more certifications; or acknowledge receipt of an amendment or addendum, provided that it is clear from the bid that the bidder received the amendment/addendum and intended to be bound by its terms, or the amendment/addendum had a negligible effect on price, scope, quantity, quality or delivery.

- (4) *Less than two responses received.* If less than two responsive bids, proposals, or replies for procurements are received, the procurement may be treated as a sole source and negotiate the best price, scope, terms and conditions.
- (5) *Award.* Solicitations shall be awarded in accordance with the evaluation factors set forth in the solicitation.
- (6) *Multiple award.* A multiple award shall be made if a single award is not advantageous to the county. A multiple award shall be limited to the least number of supplier's necessary to meet the requirements of the using agency.

Part F. Qualifications and duties.

Sec. 22.3-601. Responsibility of bidders and offerors.

Determination of non-responsibility. A written determination of non-responsibility of a bidder or offeror shall be made in accordance with the procurement procedures manual. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

Sec. 22.3-602. Prequalification of suppliers.

Unless otherwise required by Florida Statutes, prospective suppliers may be prequalified for particular types of supplies, services, and construction. Lists of potential vendors for projects and purchases shall include but not be limited to prequalified vendors.

The county may deny or revoke the qualification of persons and firms to submit responses to solicitations when they are convicted of contract crimes in accordance with F.S. 287.133., or as promulgated in section 22.3-401 (cancellation of invitations to bid, or other solicitations) of this code.

Sec. 22.3-603. Substantiation of offered prices.

The county may request factual information reasonably available to the bidder or offeror to substantiate that the price or cost offered, or some portion of it, is reasonable.

Part G. Inspection of Plant and Audit of Records

Sec. 22.3-701. Right to inspect plant or equipment.

The county may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded. The county may also inspect equipment of a contractor or subcontractor which is related to performance of any contract awarded or to be awarded. The right expressed in this section may be included in all contracts or subcontracts that involve the performance of any work or service involving the county.

Sec. 22.3-702. Right to audit records.

- (1) *Audit of cost or pricing data.* The county may, at reasonable times and places, audit the books and records of any person who has submitted data in substantiation of offered prices pursuant to section 22.3-603 (Substantiation of offered prices) to the extent that such books and records relate to that data. Any person who receives a contract, change order, or contract modification for which such data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.
- (2) *Contract audit.* The county is entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.
- (3) The requirements of this section shall be included in all contracts or subcontracts where supplies, services, or construction are being provided to the county.

Part H. Determinations and Reports

Sec. 22.3-801. Finality of determinations.

The determinations required by this section are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

Sec. 22.3-802. Reporting of anticompetitive practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the county attorney for review and possible action.

Sec. 22.3-803. Retention of procurement records.

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state and county.

ARTICLE IV. CONTRACTS

Part A. Contract Administration

Sec. 22.4-101. Purpose.

The purpose of this article is limited to formally written and signed documents agreed to by both parties.

Sec. 22.4-102. Generally.

The County Manager or designee shall establish administrative procedures necessary for the implementation of a contract administration program.

Sec. 22.4-103. Use of contracts.

Any type of contract which promotes the best interest of the county, and has been approved for legal sufficiency by the county attorney, may be used. All county contracts shall include provisions necessary to define the responsibilities and rights of the parties to the contracts.

Sec. 22.4-104. Duration of contracts.

- (1) *Specified period.* A contract may be entered into for any period of time deemed to be in the best interests of the county provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.
- (2) *Cancellation due to unavailability of funds in succeeding fiscal periods.* The county's obligation to pay and performance under any contract is contingent upon a specific annual appropriation by the board. The award of a contract does not constitute a commitment to appropriate funds after the current fiscal year in which the contract is awarded. The continuation of a contract beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes, and the failure of the board to do so shall not constitute a breach or default of the contract. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services actually delivered to the county prior to the date of cancellation.

Sec. 22.4-105. Contract clauses and their administration.

- (1) *Standard contract clauses and their modifications.* The County Manager, after consultation with the county attorney, may promulgate standard contract clauses for use in county contracts. However, the County Manager, after consultation with the county attorney, may vary any such standard contract clauses for any particular contract.
- (2) *Contract clauses.* All county contracts shall include provisions necessary to define the responsibilities and rights of the parties to the contract. Procedures may be promulgated permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, scope, delivery or other contract provisions as appropriate covering among others the following subjects:
 - (a) The unilateral right of the county to order in writing, changes in the work within the scope of the contract;
 - (b) The unilateral right of the county to order in writing, temporary stopping of the work or delaying performance;
 - (c) Variations occurring between estimated quantities of work in a contract and actual quantities;
 - (d) Defective pricing;
 - (e) Time of performance and liquidated damages;
 - (f) Specified excuses for delay or nonperformance;
 - (g) Termination of the contract for default;
 - (h) Termination of the contract in whole or in part for the convenience of the county;
 - (i) Suspension of work ordered by the county;
 - (j) Value engineering proposals;

- (k) Site conditions differing from those indicated in the contract, or ordinarily encountered.
- (l) *Terminations for lack of appropriations.*

Sec. 22.4-106. Contract amendments.

Any contract modifications that are agreed to by both parties that changes contract clauses pursuant to 22.4-105 except for those identified in Part B of this provision shall be approved subject to signature authority outlined in Article II, section 22.2-203 (signature authority) of this code.

Sec. 22.4-107. Assignments of contracts.

No agreement made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the county.

Part B. Contracts Specific to Infrastructure, Facilities and Construction Services Outlined in Article V.

Sec. 22.4-201. Definitions.

- (1) *Contingency* means an identified appropriation for a project, set aside within the project budget, for sole use at the county's discretion for unforeseen circumstances or conditions. For projects delivered on a unit cost basis, where the county provides estimated materials in the bid document, contingency may be used for reconciliation of actual materials from the estimated amounts in the contract.
- (2) *Field change order* means:
 - (a) A specific type of change order applicable to infrastructure, facilities and construction services that relates primarily to changes caused by unanticipated conditions encountered during construction not covered by the drawings, plans or specifications of the project.
 - (b) Field change orders do not increase the cost to the county or expand the size, function or intended use of the project.
 - (c) Identified contingency for projects delivered on a unit cost basis may be processed with a field change order.

Sec. 22.4-202. Changes to work.

- (1) *Field change order.* The project manager with the concurrence of the department director may approve and issue field change orders ordering minor changes in contract scope providing there is no resulting change to the contract price or contract time, except as provided for by the contingency. Field change orders are to be signed by the department director and vendor.
- (2) *Contingency.* It is customary for contracts identified in part b of this article to include a contingency for changes to the original contract through field change orders. A contingency may be included in contracts but shall generally not exceed five percent of the original contract value, unless circumstances justify same.
 - (a) When a contract is approved with such a contingency, the project manager with the concurrence of the respective department director or designee is authorized to approve one or more field change orders up to the aggregate monetary value of the contingency. The contract must contain an approved contingency clause for this type of field change order. The project manager with the concurrence of the department director shall submit such field change order documentation to the office of procurement

within five business days.

- (b) Contingency identified in a project budget but not included in a contract may be processed with a field change order up to the aggregate monetary value of the contingency. These field change orders must be approved by the County Manager prior to authorizing the work. The project manager with the concurrence of the department director shall submit such field change orders documentation to the office of procurement during the next payment draw request.
- (3) *Approval of change order.* The following shall apply for approval of change orders for infrastructure, facilities, and construction services. The County Manager may approve change orders that, either cumulatively or individually, increase the contract price up to twenty-five percent of the original contract price or does not exceed Category 2, whichever is greater. The board shall approve change orders that, either individually or cumulatively, increase the contract price by more than twenty-five percent of the original contract price or more than threshold identified in Category 2. Only the board may approve a change order that expands the size, function, or intended use of the project from that stated in the contract documents, regardless of cost. Contract time may be adjusted in any change order. All change orders approved by the County Manager, shall be reported to the board as information items to be included in its consent agenda. Change orders are subject to budgetary limitations. This authority is in addition to the authority identified in Article II, section 22.2-203 (signature authority) of this code.

ARTICLE V. PROCUREMENT OF INFRASTRUCTURE FACILITIES AND CONSTRUCTION SERVICES

Part A . Definitions

Sec. 22.5-101. Definitions of terms used in this article.

Architectural and engineering services means:

- (a) Professional services of an architectural or engineering nature, as defined by state law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this subsection;
- (b) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration or repair of real property; and
- (c) Such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

Delivery order contract means an indefinite delivery/indefinite quantity contract for supplies or services that provides for the issuance of orders for services or supplies during the contract period based on unit pricing with a not to exceed dollar amount. May also be referred to as a continuing contract or a task order contract.

Design-bid-build means a project delivery method in which the county sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.

Design-build means a project delivery method in which the county enters into a single contract for design and construction of an infrastructure facility.

Design-build-finance-operate-maintain means a project delivery method in which the county enters into a

single contract for design, construction, finance, maintenance and operation of an infrastructure facility over a contractually defined period. No county funds are appropriated to pay for any part of the services provided by the contractor during the contract period.

Design-build-operate-maintain means a project delivery method in which the county enters into a single contract for design, construction, maintenance and operation of an infrastructure facility over a contractually defined period. All or a portion of the funds required to pay for the services provided by the contractor during the contract period are either appropriated by the county prior to award of the contract or secured by the county through fare, toll, or user charges.

Design requirements means the written description of the infrastructure facility or service to be procured under this article, including:

- (a) Required features, functions, characteristics, qualities and properties that are required by the county;
- (b) The anticipated schedule, including start, duration, and completion;
- (c) Estimated budgets (as applicable to the specific procurement) for design, construction, operation and maintenance;

The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project.

Infrastructure facility means a building; structure; or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services. Included are government office buildings; public schools; public parks; courthouses; jails; prisons; water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air, and water port structures, terminals and equipment.

Operations and maintenance means a project delivery method whereby the county enters into a single contract for the routine operation, routine repair and routine maintenance of an infrastructure facility.

Proposal development documents means drawings and other design related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

Public private partnership (P3) means a collaboration between a government agency and a private-sector company that can be used to finance, build, and operate projects, such as, but not limited to, public transportation networks, parks and convention centers. Through this collaboration, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. The procurement of these services shall be in accordance with Section 255.065 and Section 334.30, Florida Statutes and in accordance with procedures set forth in the procurement procedures manual.

Part B. Contracting for Infrastructure Facilities and Services

Sec. 22.5-201. Project delivery methods authorized.

- (1) Projects relating to infrastructure shall be procured in accordance with Florida Statutes and with established procedures as set forth in the procurement procedures manual. Delivery methods may include, but are not limit to the following:
 - (a) Design-bid-build (including construction management at-risk).
 - (b) Operations and maintenance.
 - (c) Design-build.

- (d) Design-build-operate-maintain.
 - (e) Design-build-finance-operate-maintain.
 - (f) Delivery order (continuing) contract utilizing a task assignment/order.
 - (g) Public private partnership (P3).
- (2) Participation in a report or study that is subsequently used in the preparation of design requirements for a project shall not disqualify a firm from participating as a member of a proposing team in a design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurement unless such participation would provide the firm with a substantial competitive advantage.

Sec. 22.5-202. Source selection methods assigned to project delivery methods.

Procedures shall be established to select the appropriate source selection method applicable to procurements for the project delivery methods identified in section 22.5-201 (project delivery methods authorized) and procedures as identified in section 22.5-203 (choice of project delivery and source selection methods).

Sec. 22.5-203. Choice of project delivery and source selection methods.

Procedures shall be established describing the project delivery methods listed in section 22.5-201 (project delivery methods authorized). These procedures shall:

- (1) Set forth criteria to be used in determining which project delivery method is to be used for a particular project.
- (2) Grant the discretion to select an appropriate project delivery method for a particular project.
- (3) Grant the discretion to select an appropriate source selection method.
- (4) Describe the bond, insurance, and other security provisions, in consultation with the risk management department, contained in Part C of this article that apply to each project.
- (5) Describe the appropriate contract clauses and fiscal responsibility requirements in consultation with the office of management and budget that apply to each project.

Sec. 22.5-204. Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services;

It is the policy of this county to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices. The procurement of these services shall be in accordance with Section 287.055, Florida Statutes, known as the Consultants Competitive Negotiation Act (CCNA) and in accordance with procedures set forth in the procurement procedures manual.

Part C. Bonds, Insurance, Guarantees

Sec. 22.5-301. Bid security.

- (1) *Requirement for bid security.* Bid security may be required for all competitive sealed bidding for construction contracts in a procurement when the price is estimated to exceed \$100,000.00. Bid security shall be a bond provided by a surety company authorized to do business in this state, or otherwise supplied in a form satisfactory to the county. Nothing herein prevents the requirement of such bonds on such contracts under

\$100,000.00 when the circumstances warrant.

- (2) *Amount of security.* Bid security shall be in an amount equal to at least five percent of the amount of the bid.
- (3) *Rejection of bids for noncompliance with bid security requirements.* When the invitation for bids requires security, noncompliance requires that the bid be rejected unless the irregularity is waived in accordance with Article III, section 22.3-501(3) (waiving of irregularities) of this code.
- (4) *Withdrawal of bids.* After bids are opened, they shall be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw its bid (or proposal) before award, or is excluded from the competition before award, no action shall be had against the bidder or the bid security. If a bidder withdraws its bid (proposal) before award the bid security may be forfeited.
- (5) In consultation with the risk manager, insurance standards shall be established and inserted into solicitation documents as appropriate for the risk associated with the procurement.

Sec. 22.5-302. Contract performance and payment bonds.

- (1) *Requirement for performance and payment security.* Performance and payment security shall be required when a construction, design-build, design-build-operate-maintain, or design-build-finance-operate-maintain contract is awarded in excess of \$200,000.00. For contracts awarded below \$200,000.00 the performance and payment security may be waived in accordance with procedures as set forth in the procurement procedures manual. If required, the following bonds or security shall be delivered to the county and shall become binding on the parties upon the execution of the contract:
 - (a) A performance bond satisfactory to the county, executed by a surety company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to the county, in an amount equal to the contract price; and
 - (b) A § 255.05 statutory payment bond satisfactory to the county, executed by a surety company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to the county, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond shall be in an amount equal to the contract price.
- (2) *Authority to require additional bonds.* Nothing in this section shall be construed to limit the authority of the county to require a performance and/or payment bond or other security in circumstances other than specified in subsection (1) of this section.

Sec. 22.5-303. Bond forms and copies.

- (1) *Bond forms.* Procedures shall be promulgated that specify the form of the bonds required by this part.
- (2) *Certified copies of bonds.* Any person may request and obtain from the county a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

Sec. 22.5-304. Errors and omissions insurance.

Procedures shall be promulgated that specify when the county shall require offerors to provide appropriate errors and omissions insurance to cover architectural and engineering services under the project delivery methods set forth in section 22.5-201(1)(a), (c), (d), and (e).

Sec. 22.5-305. Other forms of security.

Procedures shall be promulgated specifying when the county will require a request for proposals to include one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately, or as one element of design-build-operate-maintain or design-build-finance-operate-maintain services:

- (1) Operations period surety bonds that secure the performance of the contractor's operations and maintenance obligations under the project delivery methods set forth in section 22.5-201(1)(b), (d) and (e);
- (2) Letters of credit in an amount appropriate to cover the cost to the county of preventing infrastructure service interruptions for a period up to 12 months under the project delivery methods set forth in section 22.5-201(1)(b), (d) and (e); and
- (3) Appropriate written guarantees from the contractor (or depending upon the circumstances, from parent corporations) to secure the recovery of re-procurement costs to the county in the event of a default in performance by the contractor.

ARTICLE VI. ACQUISITION, SALE OR LEASE OF REAL PROPERTY, BOTH IMPROVED AND UNIMPROVED

Conveyance of real property, both improved and unimproved will be in accordance with the procurement procedures manual except for property to be acquired pursuant to Resolution 18-101, or its successor resolution. All conveyances must be approved by the board.

ARTICLE VII. RESERVED

ARTICLE VIII. SURPLUS TANGIBLE PERSONAL PROPERTY

The disposal of county declared surplus tangible personal property shall be conducted in a manner which will be in the best interest of the county and is delegated to the Clerk of the Circuit Court of Alachua County in resolution number 94-34.

ARTICLE IX. LEGAL AND CONTRACTUAL REMEDIES

Part A. Procurement Protests

Unless otherwise governed by state or Federal law, this part shall govern the protest and appeal of Procurement decisions by the County. As used in Part A of Article 9 of the Procurement Code, the term "Bidder" includes anyone that submits a response to an invitation to bid or one who makes an offer in response to a solicitation (e.g., ITB, RFP, ITN), and is not limited solely to one that submits a bid in response to an Invitation to Bid (ITB).

Sec. 22.9-101. Protests and appeals of solicitations and awards.

- (1) *Notice of Solicitations and Awards.* The County shall provide notice of all solicitations and awards by electronic posting in accordance with the procedures and Florida law.
- (2) *Solicitation Protest.* Any prospective Bidder may file a solicitation protest concerning a solicitation.
 - (a) *Basis of the Solicitation Protest:* The alleged basis for a solicitation protest shall be limited to the

following:

- i. The terms, conditions or specifications of the solicitation are in violation of, or are inconsistent with this Code, Florida Statutes, County procedures and policies, or the terms of the solicitation at issue, including but not limited to the method of evaluating, ranking or awarding of the solicitation, reserving rights of further negotiations, or modifying or amending any resulting contract; or
 - ii. The solicitation instructions are unclear or contradictory.
- (b) *Timing and Content of the Solicitation Protest:* The solicitation protest must be in writing and must be received by the Procurement Manager by no later than the solicitation's question submission deadline. Failure to timely file a solicitation protest shall constitute a total and complete waiver of the Bidder's right to protest or appeal any solicitation defects, and shall bar the Bidder from subsequently raising such solicitation defects in any subsequent Award Protest, if any, or any other administrative or legal proceeding. In the event a solicitation protest is timely filed, the protesting party shall be deemed to have waived any and all solicitation defects that were not timely alleged in the protesting party's solicitation protest, and the protesting party shall be forever barred from subsequently raising or appealing said solicitation defects in a subsequent award protest, if any, or any other administrative or legal proceeding. The solicitation protest must include, at a minimum, the following information:
- i. The name, address, e-mail and telephone number of the protesting party;
 - ii. The solicitation number and title;
 - iii. Information sufficient to establish that the protesting party has legal standing to file the solicitation Protest because:
 1. It has a substantial interest in and is aggrieved in connection with the solicitation; and
 2. That the protesting party is responsive, in accordance with the criteria set forth in the solicitation, unless the basis for the Solicitation Protest alleges that the criteria set forth in the solicitation is defective, in which case the protesting party must demonstrate that it is responsible in accordance with the criteria that the protesting party alleges should be used;
 - iv. A detailed statement of the basis for the protest;
 - v. References to section of the Code, Florida Statutes, County policies or procedure or solicitation term that the protesting party alleges have been violated by the County or that entitles the protesting party to the relief requested;
 - vi. All supporting evidence or documents that substantiate the protesting party's alleged basis for the protest; and
 - vii. The form of the relief requested.
- (c) *Review and Determination of Protest:* If the Solicitation Protest is not timely, the Procurement Manager shall notify the protesting party that the Solicitation Protest is untimely and, therefore, rejected. The Procurement Manager shall consider all timely Solicitation Protests and may conduct any inquiry that the Procurement Manager deems necessary to make a determination regarding a protest. The Procurement Manager shall issue a written determination granting or denying the protest. The written determination shall contain a concise statement of the basis for the determination.
- (d) *Appeal:* If the protesting party is not satisfied with the Procurement Manager's determination, the protesting party may appeal the determination to the County Manager by filing a written appeal, which sets forth the basis upon which the appeal is based, including all supporting documentation. The scope of the appeal shall be limited to the basis alleged in the Solicitation Protest. The appeal must be filed with the Procurement Manager within five business days of the date on which the Procurement Manager's written determination was sent to the protesting party. Failure to timely file an appeal shall constitute a waiver of the protesting party's rights to an appeal of the Procurement Manager's

determination, and the protesting party shall be forever barred from subsequently raising or appealing said Solicitation defects in a subsequent award protest, if any, or any other administrative or legal proceeding. After considering the appeal, the County Manager must determine whether the solicitation should stand, be revised, or be cancelled, and issue a written determination and provide copies of the determination to the protesting party. The determination of the County Manager shall be final and not subject to further appeal under this code.

- (3) *Award Protest.* Any Bidder who is not the intended awardee and who claims to be the rightful awardee may file an award protest. However, an award protest is not valid and shall be rejected for lack of standing if it does not demonstrate that the protesting party would be awarded the Solicitation if its protest is upheld.

(a) *Basis of the Award Protest:* The alleged basis for an Award Protest shall be limited to the following:

- i. The protesting party was incorrectly deemed non-responsive due to an incorrect assessment of fact or law;
- ii. The County failed to substantively follow the procedures or requirements specified in the solicitation documents, except for minor irregularities that were waived by the County in accordance with this Code, which resulted in a competitive disadvantage to the protesting party; and
- iii. The County made a mathematical error in evaluating the responses to the solicitation, resulting in an incorrect score and not *protesting party not being selected for award*.

(b) *Timing and Content of the Award Protest:* The Award Protest must be in writing and must be received by the Procurement Manager by no later than 3:00 PM on the third business day after the County's proposed Award decision was posted by the County. Failure to timely file an Award Protest shall constitute a total and complete waiver of the Bidder's right to protest or appeal the County's proposed Award decision in any administrative or legal proceeding. In the event an Award Protest is timely filed, the protesting party shall be deemed to have waived any and all proposed Award defects that were not timely alleged in the protesting party's Award Protest, and the protesting party shall be forever barred from subsequently raising or appealing said Award defects in any administrative or legal proceeding. The Award Protest must include, at a minimum, the following information:

- i. The name, address, e-mail and telephone number of the protesting party;
- ii. The Solicitation number and title;
- iii. Information sufficient to establish that the protesting party's response was responsive to the Solicitation;
- iv. Information sufficient to establish that the protesting party has legal standing to file the Solicitation Protest because:
 1. The protesting party submitted a response to the Solicitation or other basis for establishing legal standing;
 2. The protesting party has a substantial interest in and is aggrieved in connection with the proposed Award decision; and
 3. The protesting party, and not any other bidder, should be awarded the Solicitation if the protesting party's Award Protest is upheld.
- v. A detailed statement of the basis for the protest;
- vi. References to section of the Code, Florida Statutes, County policies or procedure or solicitation term that the protesting party alleges have been violated by the County or that entitles the protesting party to the relief requested;
- vii. All supporting evidence or documents that substantiate the protesting party's alleged basis for the protest; and

viii. The form of the relief requested.

- (c) *Review and Determination of Protest:* If the Award Protest is not timely, the Procurement Manager shall notify the protesting party that the Award Protest is untimely and, therefore, rejected. The Procurement Manager shall consider all timely Award Protests and may conduct any inquiry that the county Procurement Manager deems necessary to resolve the protest by mutual agreement or to make a determination regarding the protests. The Procurement Manager shall issue a written determination granting or denying each protest. The written determination shall contain a concise statement of the basis for the determination.
- (d) Appeal:
 - i. If the protesting party is not satisfied with the Procurement Manager's determination, the protesting party may appeal the determination to the County Manager by filing a written appeal, which sets forth the basis upon which the appeal is based. The scope of the appeal shall be limited to the basis alleged in the award protest. The appeal must be filed with the Procurement Manager within five business days of the date on which the Procurement Manager's written determination was mailed to the protesting party. Failure to timely file an appeal shall constitute a waiver of the protesting party's rights to an appeal of the Procurement Manager's determination, and the protesting party shall be forever barred from subsequently raising or appealing said award defects in any administrative or legal proceeding.
 - ii. After reviewing the appeal, the County Manager will issue a written final determination and provide copies of the determination to the protesting party. Prior to issuing a final determination, the County Manager, in his or her discretion, may direct a hearing officer, or magistrate, to conduct an administrative hearing in connection with the protest and issue findings and recommendations to the County Manager. Prior to a hearing, if held, the Procurement Manager must file with the hearing officer the protest, any background information, and his or her written determination. The protesting party and the County shall equally share the cost of conducting any hearing, including the services of the hearing officer. If applicable, the County Manager may wait to issue a written final determination until after receipt of the findings and recommendations of the hearing officer. The determination of the County Manager shall be final and not subject to further appeal under this code.
- (4) *Burden of Proof:* Unless otherwise provide by Florida law, the burden of proof shall rest with the protesting party.
- (5) *Stay of Procurements during Protests.* In the event of a timely protest, the County shall not proceed further with the solicitation or with the award of the contract until the Procurement Manager, after consultation with the head of the using department, makes a written determination that the award of the solicitation without delay is:
 - (a) Necessary to avoid an immediate and serious danger to the public health, safety, or welfare;
 - (b) Necessary to avoid or substantial reduce significant damage to County property;
 - (c) Necessary to *avoid or substantially reduce interruption of essential County Services; or;*
 - (d) Otherwise in the best interest of the public.

Sec. 22.9-102. Authority to suspend.

Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the procurement manager after consultation with the using agency and county legal staff shall have authority to suspend a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The authority to suspend and to approve such suspension shall be exercised in accordance with procedures as set forth in the procurement procedures manual.

Part B. Solicitations or Awards in Violation of Law

Sec. 22.9-201. Applicability of this part.

The provisions of this part apply where it is determined administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law.

Sec. 22.9-202. Remedies prior to an award.

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be cancelled or revised to comply with the law.

Sec. 22.9-203. Remedies after an award.

If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (a) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the county; or
 - (b) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, prior to the termination.
- (2) If the person awarded the contract has acted fraudulently or in bad faith:
 - (a) The contract may be declared null and void; or
 - (b) The contract may be ratified and affirmed if such action is in the best interests of the county, without prejudice to the county's rights to such damages as may be appropriate.

Sec. 22.9-204. Unauthorized purchases.

- (1) Unauthorized purchases in excess of \$25,000.00 .

All requests for approval for payment of purchases in excess of \$25,000.00 not procured in accordance with this code or procedures promulgated by the County Manager shall be processed as follows:

- (a) The department director of the department involved shall submit a detailed memorandum of explanation to the board of county commissioners explaining and justifying the after-the-fact purchase.
 - (b) The department director shall be responsible for scheduling the item on the board of county commissioners meeting agenda and shall be present at the board of county commissioners meeting to provide any explanation or clarification needed.
 - (c) The board of county commissioners may: (i) approve the item for payment; (ii) disapprove the item for payment; or (iii) hold the item for further information.
 - (d) An employee making unauthorized purchases may be subject to disciplinary action.
- (2) Unauthorized purchases \$25,000.00 or less shall be paid in accordance with procedures promulgated by the County Manager.

ARTICLE X. INTERGOVERNMENTAL RELATIONS

Part A. Definitions.

Sec. 22.10-101. Definitions of terms used in this article.

Consortium means a group of purchasing entities that come together to join forces in the purchasing of selected products or services used by the group. The aggregation of need and joint purchase usually results in lower pricing as a result of economies of scale.

Cooperative purchasing means procurement conducted by, or on behalf of, one or more public procurement units, as defined in this code.

External procurement activity means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit. Agencies of the United States and of any other state in the United States of America are external procurement activities.

Local public procurement unit means any county, city, town, and any other subdivision of the state or public agency of any such subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, and any nonprofit corporation operating a charitable hospital.

Public procurement unit means any one of the following:

- (a) Office of procurement.
- (b) A local public procurement unit.
- (c) An external procurement activity.
- (d) A state public procurement unit.
- (e) Any not-for-profit entity comprised of more than one unit or activity listed herein.

Part B. Cooperative Purchasing

Sec. 22.10-201. Cooperative purchasing authorized.

- (1) The county may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more public procurement units or procurement consortiums in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units or procurement consortiums and open-ended public procurement unit contracts that are made available to other public procurement units.
- (2) All cooperative purchasing conducted under this article shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in Article III (Source Selection and Contract Formation) of this code.
- (3) Cooperative procurement opportunities will only be used when it is in the county's best interest.

Sec. 22.10-202. Sale, acquisition, or use of supplies by a public procurement unit.

In accordance with the procurement procedures manual, the county may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of Article III (Source Selection) of this code.

Sec. 22.10-203. Cooperative use of supplies or services.

In accordance with the procurement procedures manual, the county may enter into an agreement, independent of the requirements of Article III (Source Selection) of this code, with any other public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

Sec. 22.10-204. Joint use of facilities.

In accordance with the procurement procedures manual, the county may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

Sec. 22.10-205. Supply of personnel, information, and technical services.

- (1) *Supply of personnel.* In accordance with the procurement procedures manual, the county may, upon written request from another public procurement unit to provide personnel to the requesting public procurement unit. The public procurement unit making the request may pay the county the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties. Personnel from another Public Procurement Unit may be hired to assist the county as needed.
- (2) *Supply of services.* The informational, technical, and other services of the county may be made available to any other public procurement unit. The requesting public procurement unit may pay for the expenses of the services so provided, in accordance with an agreement between the parties.

Sec. 22.10-206. Public procurement units in compliance with code requirements.

Where the public procurement unit administering a cooperative purchase complies with the requirements of this code, any public procurement unit participating in such a purchase shall be deemed to have complied with this code. Public procurement units may not enter into a cooperative purchasing agreement for the purpose of circumventing this code.

Part C. Contract Controversies

Sec. 22.10-301. Contract controversies.

- (1) *Public procurement unit subject to article 9 (legal and contractual remedies).* Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved between the ordering public procurement unit and the supplying Bidders, offerors, or contractors in accordance with Article IX (Legal and Contractual Remedies).
- (2) *Public procurement unit not subject to Article IX (Legal and Contractual Remedies).* Any public procurement unit which is not subject to Article 9 (Legal and Contractual Remedies), Part E (Procurement Appeals Board), is authorized to:
 - (a) Enter into an agreement with the county to resolve controversies between the public procurement unit and its contractors, whether or not such controversy arose from a cooperative purchasing agreement; and
 - (b) Enter into an agreement with another public procurement unit to establish procedures or use such unit's existing procedures to resolve controversies with contractors, whether or not such controversy arose under a cooperative purchasing agreement.

ARTICLE XI. SMALL BUSINESS ENTERPRISE PROGRAM; STATE AND FEDERAL ASSISTANCE REQUIREMENTS, ENVIRONMENTAL PROCUREMENT PROGRAMS AND LOCAL PREFERENCE PROGRAM

Part A. Definitions

Sec. 22.11-101. Definitions of terms used in this article.

The following words in this article shall have the meanings set forth below:

A Useful Business Function is one which results in the provision of materials, supplies, equipment, or services to customers. For this reason, merely acting as a financial conduit to transfer funds to a non-small business enterprise will not constitute a Useful Business Function, unless it is done as a part of normal industry practices.

Small Business means an independently owned and operated business currently performing a Useful Business Function that is headquartered in the Small Business Enterprise Zone, and meets the requirements of Section 22.11-202(1), whether emerging or established.

Small Business Enterprise Zone means the area comprised of a list of neighboring counties approved by the county.

Part B. Small Business Enterprise Program

Sec. 22.11-201. Purpose and intent.

The lack of small business participation in the natural economy is reflected in state and local contracting for the purchasing of supplies, services and construction. Therefore, the purpose and intent of this article is to provide the maximum for increased participation of small businesses in the county's procurement system

Sec. 22.11-202. Certification.

- (1) The county shall certify small business enterprises (SBE) for use by the county in its procurement process and will maintain an up-to-date electronic list of SBE.
 - (a) To become certified as an SBE, a business must be currently performing a Useful Business Function, be headquartered in the Small Business Enterprise Zone, and be either an:
 - (i) Emerging Small Business: have 25 or fewer permanent, full-time employees and have a net worth not exceeding \$1,000,000.00; or
 - (ii) Established Small Business: have 25 or fewer permanent, full-time employees and have a net worth not exceeding \$5,000,000.00.
 - (b) The county will approve a list of neighboring counties that may be included, in whole or in part, in the Small Business Enterprise Zone and shall publish the boundaries of the Small Business Enterprise Zone on the County website.
 - (c) Certifications for SBE are valid for one year from certification date.
- (2) This list of SBE shall be used in the bid solicitation process, and all departments are encouraged to utilize this list in their procurement activities.

- (3) The county shall use reasonable efforts to identify small businesses which are eligible for certification in all areas of county procurement.

Sec. 22.11-203. False representation.

- (1) It is unlawful for any individual or entity to knowingly submit false information in order to qualify for SBE certification.
- (2) Any contractor that falsely represents to the county that it is an SBE, or knowingly submits false information or represents that it will use the services or commodities of an SBE and subsequently does not, shall be deemed in breach of contract. Upon a determination that a breach has occurred, all payments under the contract or any other arrangement shall be immediately suspended. The contractor may show that it attempted in good faith to comply with the terms of the contract but was unable to comply. If the county determines that the contractor did not act in good faith, all amounts paid to the contractor under the county contract or agreement intended for expenditure with the SBE shall be forfeited and recoverable by the county. In addition, the contract or agreement may be rescinded and the department or division may return all unused supplies received and recover all amounts paid under the contract.
- (3) Any contractor or affiliate determined to have falsely represented that it or a subcontractor is an SBE, or determined to have not acted in good faith to fulfill the terms of a contract calling for it to use the services or commodities of an SBE, may be considered under the county's suspension and debarment policy.

Sec. 22.11-204. Acquisition of professional services.

When procuring professional services, the county shall endeavor to include SBE. The county's administrative procedures for the formal evaluation of professional services shall include but not be limited to SBE status.

Sec. 22.11-205. Reservation of contracts.

- (1) The county may reserve contracts to be awarded only to SBE. The county shall review all of its needs and requirements in each fiscal year, and shall determine which contracts may be reserved for bidding only by SBE. This reservation may only be used when it is determined, before dissemination of the request for proposals or invitation to bid, that there are capable, qualified, SBE available within the SBE zone who are interested and willing to bid on these contracts in order to provide for effective competition. Once a decision has been made to reserve a contract the county shall estimate what it expects the dollar amount of the contract to be, based on the nature of the contract and its value under prevailing market conditions. If all the bids received are over this estimate, the county may reject the bids and open the bidding to all vendors and contractors. Before contracts can be reserved for bidding only by SBE, the county must determine that such a reservation is in the best interest of the county.
- (2) The county may reserve any construction contract for competitive bidding only among contractors who agree to utilize SBE as subcontractors or sub-vendors. The percentage of funds which must be expended with SBE subcontractors and sub-vendors shall be determined by the county before the contracts is reserved. In order to bid on a construction contract so reserved, the contractor shall identify those SBEs which will be utilized as subcontractors or sub-vendors. Once a decision has been made to reserve a contract, but before bids are requested, the county shall estimate what it expects the amount of the contract to be, based on the nature of the contract involved and its value under prevailing market conditions. If all the bids received are over this estimate, the county may reject the bids and open the bidding to all vendors and contractors. It is the express responsibility of the contractor to verify that all SBEs which will be utilized as subcontractors or sub-vendors are currently certified by the county.

Sec. 22.11-206. SBE preference.

- (1) The county will award a five-percent bid price preference to any SBE that submits a bid to the county.

- (2) The county will award a three-percent bid price preference to any vendor that agrees to use SBE's for at least 15 percent of the dollar value of the bid.
- (3) If the adjusted bid price of the SBE vendor is equal to or lower than the lowest responsive bid, the SBE will be awarded the solicitation.
- (4) The county will award an amount that equals five percent of the total points of the evaluation criteria published in the solicitation to any SBE who submits a response to an RFP.
- (5) The county will award an amount that equals three percent of the total points of the evaluation criteria published in the solicitation to any vendor who commits to meet or exceed thirty percent SBE participation in response to an RFP. Vendors must provide the SBE certification and percentage they are committing to use or zero preference points will be given.
- (6) If no SBE vendors are being used, the vendor should make a good faith effort to use SBE vendors, if and when the work is not being completed entirely by the proposing vendor.
- (7) The county will promulgate procedures necessary to implement the SBE preference.
- (8) SBE bid or RFP preferences will not be combined.

Sec. 22.11-207. Responsiveness of bids—Good faith effort.

- (1) Every competitive bid or proposal, if not submitted by an SBE, should demonstrate good faith efforts to utilize SBE as subcontractors or sub-vendors.
- (2) The county may consider written documentation submitted with the bid package or proposal in determining whether a contractor has made one or more good faith efforts including, but not limited to:
 - (a) Whether the contractor attended any pre-solicitation or pre-bid meeting that was scheduled by the county to inform SBE of contracting and subcontracting opportunities;
 - (b) Whether the contractor advertised in a general circulation, trade association, and/or SBE focus media concerning the subcontracting opportunities;
 - (c) Whether the contractor provided written notice to a reasonable number of SBE that their interest in the contract was being solicited in sufficient time to allow the SBE to participate effectively;
 - (d) Whether the contractor followed up initial solicitations of interest by contacting SBE to determine whether a SBE is interested;
 - (e) Whether the contractor selected portions of the work to be performed by SBE in order to increase the likelihood of meeting the SBE goals of the county, including, where possible, breaking down contracts into economically feasible units to facilitate SBE participation;
 - (f) Whether the contractor negotiated in good faith with interested SBEs, not rejecting SBEs as unqualified without sound reasons based on investigation of their capabilities;
 - (g) Whether the contractor made efforts to assist interested SBEs in obtaining bonding, lines of credit, or insurance required by the county and/or the contractor; and
 - (h) Whether the contractor effectively used the services of available small business community organizations; small business contractors' groups; local, state, and federal business assistance offices; and other organizations that aid in the recruitment and placement of small businesses.
- (3) The county may waive the good faith requirement for procurement where sub-contracting is not applicable or in order to ensure adequate competition.

Sec. 22.11-208. Assistance program.

Through the SBE assistance program, vendors will be encouraged and assisted in becoming certified as an SBE with the county. The county will promulgate procedures necessary to implement the assistance program.

Sec. 22.11-209. Implementation of policy; monitoring of compliance.

- (1) The county will:
 - (a) Establish and compile a system of coordinated, uniform procurement policies, procedures and practices to implement the SBE program.
 - (b) Strongly encourage the expenditure of 15 percent of the total competitive procurement monies with SBE for materials, supplies, equipment, services and construction.
 - (c) Formulate and establish a system to record and measure the use of SBE in county procurement. This system shall maintain information and statistics on SBE participation, in order to analyze the progress of the SBE program.
- (2) The procurement manager shall annually report the procurement disbursements made to SBEs to the County Manager. This information shall be made available to the county commissioners as well as the public at large.

Part C. State or Federal Assistance or Contract Procurement Requirements

Sec. 22.11-301. Compliance with state or federal requirements.

Where a procurement action involves the expenditure of state or federal assistance or contract funds, the procurement shall comply with such state or federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this code.

Part D. Environmental Procurement Programs

Sec. 22.11-401. Environmental procurement program.

Wherever feasible the county will stipulate energy efficiency, reduced packaging, recycled content and recyclability in specifications. Further the county may implement procedures implementing these policies.

Part E. Local Preference Program

Sec. 22.11-501 Local Preference Program

1. The Local Preference Program has the goals of employing local residents and businesses, reducing local unemployment, generating tax revenue in Alachua County, rewarding local residents and businesses who contribute to the County through payment of taxes, and providing continuous, stable work for local residents and businesses.
2. For the purposes of this Part, the term "Local Business" means: (a) a Vendor that headquartered within the geographic boundary of Alachua County, Florida, for at least twelve months immediately prior to the issuance of the Request for Proposal or Invitation to Bid by the County, and (b) is the principal Offeror, not a subcontractor or a joint venturer. A post office box or a facility that receives mail, or a non-permanent structure such as a construction trailer, storage shed, or other non-permanent structure, does not constitute a physical business address. Vendors must advise the County that they are a Local Business at the time of submitting their proposal to the County in order to qualify as Local Business. The Procurement Procedures Manual shall describe the information, documentation, and procedures by which a Vendor must demonstrate that it is a Local Business.
3. The Local Preference Program shall apply to all Category 2 and 3 Requests for Proposals or Invitation to Bid

issued by the County, except: (a) when prohibited by state or federal law, (b) it is prohibited by other funding source restrictions (e.g., grant award) that will be used to pay, in whole or in part, the cost of the goods, services or construction to be procured by the Request for Proposal, and (c) all procurements exempt from the source selection process pursuant to Section 22.3-302 of the Code. For each Request for Proposal issued under the Local Preference Program, the County shall include weighted criterion to award each eligible Local Business an amount that equals five percent of the total points of the evaluation criteria published in the solicitation. For each Invitation to Bid issued under the Local Preference Program, the County shall award each eligible Local Business an amount that equals five-percent bid price preference to any Local Business that submits a bid to the county.

4. The Board may waive the application of the Local Preference Program to a particular Request for Proposal or Invitation to Bid, provided the Board waives the requirement by majority vote taken prior to the issuance of the Request for Proposal. To the extent not prohibited by state or federal law, the Board may also require that a Local Preference be included in a particular Request for Proposal, Invitation to Bid, or other method of procurement, provided that the vote occurs prior to: (a) the issuance of the solicitation and applicability of the Local Preference is described in the solicitation, or (b) if no formal solicitation is required, prior to purchase by the County.

ARTICLE XII. ALACHUA COUNTY GOVERNMENT MINIMUM WAGE

Part A. Definitions

Sec. 22.12-101. Definition of terms used in this article.

County means the Alachua County Board of County Commissioners, its departments and divisions.

Cooperative purchasing agreement means services purchased under the terms and conditions of another local, state, federal, or other public agency's bid or cooperative bids put together by agencies.

Covered employee is a person paid by a contractor or subcontractor directly involved in providing covered services pursuant to the contractor or subcontractor's contract with the county, during the period of time he or she is providing the services. Covered employee does not include an inmate, a student enrolled in a degree program who is employed under the auspices of the educational institution, a person who is employed through an ongoing written job training program, or a worker with a disability as defined in 29 CFR 525.3.

Covered services:

- (a) Are defined as the following services purchased by the county under a single contract that is over the current bid threshold and are any of the following:
 - i. Agriculture and forestry.
 - ii. Clerical or other non-supervisory office work, including secretarial, typing, data entry, filing, transcription, specialized billing, sorting or completing forms, and word, data, and information processing.
 - iii. Construction.
 - iv. Food preparation and distribution.
 - v. Janitorial and custodial.
 - vi. Landscaping and grounds maintenance.
 - vii. Facilities maintenance.
 - viii. Refuse removal and recycling.
 - ix. Printing and reproduction.
 - x. Security.

- (b) However, covered services are excluded from the article when:
- i. The funds used to pay for the services do not allow for increased cost due to local procurement requirements;
 - ii. Non-profit organizations established under a 501(c) offering services to the community and citizens; or
 - iii. Exempt from bidding under Article III, section 22.3-302(2), (3), (12), (13), (16), (27), (28) of this Code.

Health benefits are any plan, fund, or program established or maintained by the service contractor or subcontractor for the purpose of providing for its participants or beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits.

Health benefit wage is equivalent to the wage of the lowest paid classified employee of the county.

Non-health benefit is the health benefit wage plus \$2.00 per hour.

Inmate is a person who is providing services while under the supervision of state or county probation or corrections.

Payroll records are the name, address, employee classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid and, if applicable, those records necessary to determine whether health benefits, as described herein, are being provided or offered to covered employees.

Service contractor or subcontractor is an individual, business entity, corporation, partnership, limited liability company, joint venture, or similar business, providing a covered service to the county, but not including employees of any subsidiaries, affiliates or parent businesses. The calculation of number of employees is made as of the date of execution of the contract for covered services.

Part B. Alachua County Government Minimum Wage.

Sec. 22.12-201. Minimum wage paid

- (1) The Alachua County Government minimum wage shall be a requirement in all solicitations of covered services, except that pursuant to sections 2 and 3 of Chapter 2024-80, Laws of Florida, this Article XII shall not apply to any contract entered into by the County on or after September 30, 2026 regardless of whether the procurement solicitation requires compliance with the Alachua County Government Minimum Wage. This Article XII shall automatically sunset and shall be deemed automatically repealed on September 30, 2026, but does not impair any contract entered on or before September 30, 2026.
- (2) A contractor or subcontractor of the county providing a covered service to the county shall pay to all of its covered employees an Alachua County Government minimum wage of either the health benefit wage and provide health benefits or pay a non-health benefit wage.
- (3) If the health benefit program of a contractor or subcontractor requires an eligibility period of employment for a new employee to be eligible for health benefits, then such contractor or subcontractor, in order to comply, may pay the non-health benefit wage until such time as the new employee is offered or provided health benefits.
- (4) The health benefit wage and non-health benefit wage shall be recalculated annually.
- (5) The contractor shall certify to the county that it will pay each of its covered employees the Alachua County Government minimum wage, and ensure that it will require that of its subcontractors. Upon execution, the certification shall become an obligation under the contract. The certification must also include, at a minimum, the following:
 - (a) The name, address, and phone number of the service contractor or subcontractor and a local contact person;

- (b) The specific project for which the service contract is sought;
- (c) An agreement to comply with the terms of this article as part of its contractual obligations.
- (6) A copy of the Alachua County Government minimum wage rate shall be posted by the contractor in a prominent place where it can easily be seen by the covered employees and shall be supplied to any covered employee upon request. In addition, it is the responsibility of the contractor to make any person submitting a bid for a subcontract providing covered services aware of the requirements of this article.

Sec. 22.12-202. Application and enforcement.

- (1) The Alachua County Government minimum wage shall be a requirement in all solicitations of covered services.
- (2) If such solicitation results in no responsive bids, the procurement manager may solicit the covered services after notification is provided to the County Manager and the commission a second time without requiring compliance with the Alachua County Government minimum wage requirement.
- (3) Any contract awarded or amended shall contain the prevailing wage at the time of execution. That wage will remain in effect for the time of the contract.
- (4) The county shall include in its contracts for covered services the requirements that:
 - (a) The contractor shall comply with the provisions of the Alachua County Government minimum wage requirements, and that failure to do so shall be deemed a breach of contract and shall authorize the county to withhold payment of funds in accordance with Chapter 218, FS.
 - (b) The contractor will include necessary provisions in each of its subcontracts for covered services to ensure compliance with this article. However, the county shall not be deemed a necessary or indispensable party in any litigation between the contractor and a subcontractor.
- (5) A person who claims that he or she is a covered employee and that the employer is not complying with the requirements of this article may file a written complaint with the EO department. A covered employer may be required to produce payroll and other records deemed relevant to the investigation of a complaint. This remedy is not exclusive or in any way meant to prohibit any relief afforded by a court of law, or otherwise prohibit the county from terminating a contract or taking other action as allowed by law.
- (6) A contractor or subcontractor shall not discharge, reduce the compensation of, or otherwise discriminate against any covered employee for filing a written complaint or otherwise asserting his or her rights under this article, participating in any of its proceedings or using any available remedies to enforce his or her rights under this article. A person who claims that he or she has been a victim of a violation of this subsection may file a written complaint with the Alachua County Equal Opportunity Department.

ARTICLE XIII. ETHICS IN PUBLIC CONTRACTING

Sec. 22.13-101. Statement of policy.

Public employment is a public trust.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the county procurement process. To achieve the purpose of this article, it is essential that those doing business with the county also observe the ethical standards prescribed herein.

Sec. 22.13-102. General standards of ethical conduct.

- (1) *General ethical standards for employees and officials.* Every employee, and elected or appointed official of Alachua County has the responsibility to maintain the confidence of the citizens of Alachua County by conducting the procurement process in an ethical, fair and transparent manner. Employees and officials shall act in good faith to discharge their duties and avoid either the intent or appearance of unethical practices in procurement relationships, actions and communications. Any attempt to realize personal gain from the procurement process is a breach of a public trust. All county employees and elected or appointed officials of Alachua County shall govern themselves in accordance with the standards of conduct as set forth in applicable county regulations and F.S. Ch. 112.
- (2) *General ethical standards for non-employees.* Any effort to influence any public employee to breach the standards of ethical conduct is a breach of ethical standards.
- (3) *General ethical standards for vendors.*
 - (a) No vendor shall discuss or consult with other vendors intending to compete for the same or similar contract for the purpose of bid rigging, collusion or other activities that are illegal, unethical or limiting competition. No vendor shall submit false information or intentionally submit misleading information.
 - (b) No vendor shall submit false information or intentionally submit misleading information.
 - (c) After the issuance of any solicitation, no current or prospective vendor or any person acting on their behalf, shall contact, communicate with or discuss any matter relating to the solicitation with any Alachua County employee or elected or appointed official, other than the procurement manager or his/her designee. The prohibition ends upon execution of the final contract or upon cancellation of the solicitation. Any current or prospective vendor that lobbies any Alachua County employee or elected or appointed official while a solicitation is open or being recommended for award may be deemed ineligible for award of that solicitation by the procurement manager and may be subject to suspension or debarment outlined in Article IX of this code.

Sec. 22.13-103. Remedies.

Failure to comply with this section shall be deemed a violation of ethical standards subject to administrative actions and may be subject to civil, and/or criminal penalties for ethical violations. Employees who violate the ethics standards described in this section may be subject to administrative disciplinary action up to and including dismissal from employment. Vendors who violate the ethics standards described in this section may be subject to suspension and debarment outlined in Article IX of this code.