

Chapter 21 - OPERATIONAL POLICY, PROCUREMENT CODE FINANCE AND

ADMINISTRATIVE SERVICES

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PART I. - GENERAL PROVISIONS, PURPOSES, CONSTRUCTION, AND APPLICATION

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21.1. - Authority.

Pursuant to the authority granted by the Broward County Code of Ordinances, the rules and regulations set forth herein have been promulgated and approved by the Broward County Board of County Commissioners.

(1988-0180, 1-12-88)

21.2. - Short Title.

These rules and regulations shall be known and may be cited as the "Procurement Code of Broward County".

(1988-0180, 1-12-88)

21.3. - Purposes, Rules of Construction.

a. *Interpretation.* This Code shall be construed and applied to promote its underlying purposes and policies.

b. *Purposes and Policies.* The underlying purposes of this Code are to provide Broward County a unified purchasing system, with centralized responsibility allowing for processing of some work by delegation. This Code simplifies, clarifies and modernizes the rules and regulations governing procurement by the County while allowing the continued development of procurement policies and practices. This Code provides for increased economy in procurement activities and enables the County to maximize to the fullest extent practicable, the purchasing value of public funds by fostering effective broad based competition within the free enterprise system, while ensuring fair and equitable treatment of all persons who deal with County Procurement. This Code provides safeguards for the maintenance of a procurement system of quality and integrity and also is intended to provide for increased public confidence in the procedures followed by public procurement.

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

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

(1988-0180, 1-12-88; 2011-696, 11-8-11)

21.4. - Supplementary General Principles of Law Applicable.

The principles of law and equity, including the Uniform Commercial Code of this State, the law merchant, law relative to ethics, and law relative to contracts, agency, business entities, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Code. All contracts awarded by virtue of this Code, and all procurement of the County pursuant to this Code, shall be governed by and construed under the laws of the State of Florida and the local laws of Broward County. Negotiation of contracts, amendments thereto, and work authorizations shall be in accordance with Government in the Sunshine law.

(1998-1021, 10-6-98; 2005-290, 4-26-05)

21.5. - Requirement of Good Faith.

This Code requires all parties involved in the negotiation, development, performance, or administration of County contracts to act in good faith.

(1988-0180, 1-12-88)

21.6. - Application of this Code.

a. *General Application.* This Code applies only to contracts solicited or entered into after the effective date of this Code unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

b. *Application to Procurement.* This Code shall apply to every Procurement of the Board of County Commissioners irrespective of the source of the funds, including federal assistance monies except as otherwise specified in Section 21.18; except that this Code shall not apply to either grants, agreements of any nature or contracts between the County and qualified, eligible nonprofit grantees under Section 501 of the Internal Revenue Code, or other governments. It shall also apply to the disposal of County supplies. Nothing in this Code or in regulations promulgated hereunder shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

c. *Waiver of Code.* The Board may waive all or specific provisions of this Procurement Code for good cause, prior to the solicitation of offers, or may waive specific provisions of this Procurement Code as is in the best interest of the County, at any point in the procurement process.

d. *Application to Other Governmental Bodies.* Any governmental body other than those under the direct control of the Board may choose to utilize the procurement services of the Purchasing Division, with the concurrence of the Purchasing Division or the Board. To the degree they utilize these services, they shall be subject to the provisions of these rules and regulations.

(1988-0180, 1-12-88; 1998-1021, 10-6-98; 2001-1071, 10-23-01)

21.7. - Determinations.

Written determinations required by this Code shall be retained in the appropriate official contract file of the Director of Purchasing.

(1988-0180, 1-12-88)

21.8. - Definitions.

a. The words defined in this Section shall have the meanings set forth below whenever they appear in this Code, unless:

1. *Context Determines Definition.* The context in which they are used clearly requires a different meaning; or
2. *Definition Prescribed.* A different definition is prescribed for a particular "Part" or provision.

b. Definitions.

1. *Addenda* means additional directions or modifications to the solicitations which are issued as separate documents after issuance of the solicitations.
2. *Administrator* means the County Administrator, who is the head of the Administrative Branch of County Government.

3. *Amendment* is a method of changing the terms and conditions or requirements of a contract or agreement beyond what is specifically provided for in the contract. All amendments must be approved with equal dignity and formality as the original contract signed by the appropriate awarding authority based on the total amount of all amendments.
4. *Award* means the acceptance of a Bid, Offer, or Proposal by the proper Governmental Authority. The Board of County Commissioners must award all contracts over the limit established in 21.31 with the exception of Emergency Procurement discussed in Section 21.39 or as otherwise specified in this Code.
5. *Board* means the Board of County Commissioners of Broward County, Florida.
6. *Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
7. *Competitive Selection and Negotiation* is a method of procurement whereby qualified professional firms are invited to submit either "Letters of Interest" or "Proposals" and are shortlisted" by an appropriately-appointed selection/evaluation committee. Discussions are held with at least the top three firms who are either ranked or scored, and negotiations are initiated with the best rated firm. If negotiations are unsuccessful, they shall be terminated and negotiations shall proceed with the other firms in order of their rating. Eventual selection is made of one firm with which negotiations take place.
8. *Construction Change Order* is a written order authorized by the proper authority, directing the contractor to make changes which the changes clause of the construction contract authorizes.
9. *Change Order* is a written order amending a Purchase Order to correct errors, omissions, or discrepancies in Purchase Orders to cover acceptable overruns and freight costs; incorporate requirements to expand or reduce the scope of goods or services ordered; or to direct other changes in contract execution to meet unforeseen field, emergency, climatic, regulatory or market conditions which is authorized by the change order clause of the contract.
10. *Consultants' Competitive Negotiations Act or (CCNA)* is the common name for Section 287.055 of the Florida Statutes, as amended. concerning the procurement of Architectural, Engineering (including testing), Landscape Architecture, and Registered Land Surveying and Mapping Services. These services shall be procured by either Request for Letters of Interest or Request for Proposals and Competitive Selection and Negotiation.
11. *Contract* means all types of binding agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.
12. *Contractor* means any person having a contract with the Board of County Commissioners.
13. *Contract Administrator* means the ranking managerial employee of the agency requesting items or services, or an employee expressly designated by the Department Director. The contract administrator has the responsibility to insure that the provisions of each contract are complied with by both the County and the Contractor.
14. *Contract Modification* means any written alteration in specifications, delivery point, rate of delivery, period of performance, brand or model, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. Such a modification if not provided

for in the original contract must be effected by a formal Amendment to the Contract.

15. *Construction* means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property owned or under the control of Broward County. It does not include the routine operation, repair, or maintenance of existing structures, buildings, or other real property.

16. *Cooperative Purchasing* means the procurement conducted by or on behalf of more than one public procurement unit.

17. *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 and a fee, if any.

18. *County Public Procurement Unit* means the Purchasing Division of Broward County.

19. *Current Known Requirements* means the amount of an item or service that will fulfill the needs of any County agency at any point in time or the estimated amount of an item or service that is projected to fulfill the needs of the County for a period of time specified in a bid document. The award authority is based upon the current known requirements and, if this amount changes, then the award authority will be adjusted, if necessary, at the next opportunity to rebid the contract.

20. *Data* means recorded information, regardless of form or characteristic.

21. *Design-build* means a single contract with a design-build firm for the design and construction of a county construction project pursuant to the Consultants' Competitive Negotiation Act.

22. *Design criteria package* means concise, performance-oriented drawings or specifications of the project and shall include such performance-based criteria as the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, and parking requirements, as may be applicable to the project.

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

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

25. *Emergency* means a threat to public health, welfare, safety, property or other substantial loss to the County.

26. *Discount-from-List Contracts* means those contracts whereby price is determined by applying a percentage discount from an established catalog price. This type of contract is only to be used when it is determined by the Director of Purchasing that this contracting methodology is in the best interest of the County.

27. *Employee* for the purposes of this Code means an individual employed by the Board of County Commissioners drawing a salary or wages from the Board, and any non-compensated individual performing personal services for such a governmental body.

28. *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; and
- (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.

29. *Excess Supplies* means any supplies having a remaining useful life but which are no longer required by the using agency in possession of the supplies.

30. *Expendable Supplies* means all consumable supplies other than non-expendable supplies.

31. *External Procurement Activity* means any buying organizations not located in this County, which, if located in this County, would qualify as a public procurement unit. An agency of the United States or any state government is an external procurement activity.

32. *Firm Fixed-Price Contract* means a contract whereby the price is fixed, not variable, for the entire life of the contract or until a set quantity of goods or services is delivered.

33. *General Services* means support services performed by an independent contractor requiring specialized knowledge, experience, or expertise. The service rendered does not consist primarily of acquisition of equipment or materials. A general service may be differentiated from a professional service by the degree of direction given to the provider. A professional service generates solutions with very little direction from the government while a general service provides a measured outcome of work completed.

Examples: designing a computer system is a professional service; writing computer code or providing a packaged system is a general service; designing a building is a professional service; drawing plans is a general service. Additional examples of general services are: pest control, janitorial, laundry, catering, security, and maintenance of equipment. General Services are procured through either a Request for Letters of Interest, a Request for Proposals, or an Invitation for Bids. Procurement of general services may include subjective evaluation factors of the submitting firms.

34. *Governmental Agency* means any agency of the Federal, State, or any local government.

35. *Grant* means the furnishing by the County Government or a County-authorized not-for-profit provider of assistance, whether financial or otherwise, to any person to support a program or activity, or the furnishing to the County Government of such assistance by another entity. It does not include an award to a for-profit organization, the primary purpose of which is to procure an end product to be provided directly to the County Government, whether in the form of supplies, services, or construction. A contract resulting from such an award is not a grant but a procurement contract.

36. *GSA Contracts* means contracts entered into by the General Services Administration of the Federal Government (also known as GSA Schedules) and are multiple award contracts containing prices to be utilized by all Federal Government Agencies. GSA contracts also contain the most-preferred-customer clause, making the prices contained in GSA contracts equivalent with those

that are given to the most preferred customer of the vendor.

37. *Invitation for Bids* means all documents, whether attached or incorporated by reference, utilized for soliciting formal bids.

38. *Letter of Interest (Request for)* or *RLI* is a method of selecting a vendor whereby all vendors are invited to submit a summary of their qualifications and state their interest in performing a specific job or service. From these Letters of Interest, the County determines which vendors shall be "shortlisted," interviewed, and selected for final negotiation for a contract.

39. *Local Public Procurement Unit* means any City, Town, and any other subdivision of the state located within Broward County or a public agency of any such subdivision, public authority, educational, health, or any other institution, and any other entity which expends public funds for the procurement of supplies, services, and construction.

40. *Lock-In* means the improper construction of specifications so as to limit, unnecessarily, the number of vendors or brands that may compete on any particular procurement.

41. *Mandatory Bid Amount* means the dollar amount at which the formal Bid Process is required unless an exemption is provided in this Code. The Mandatory Bid Amount is \$50,000. Purchases below the Mandatory Bid Amount shall, whenever possible, be procured through informal quotations, but other informal methods may be used at the discretion of the Director of Purchasing. The current known requirement of any commodity or service shall not be divided to circumvent the requirement of the Mandatory Bid Amount; however, there is no requirement to aggregate all predicted amounts of any commodity or service for formal bidding. The Director of Purchasing may deem it more beneficial or economical to purchase an annual or alternate quantity of a commodity or service at one time or to enter into an open-end contract for annual or alternate requirements, in which case if the aggregate total exceeds the mandatory bid amount, formal bid procedures shall be used.

42. *Materially Unbalanced Bid* means a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the County; or which is so mathematically unbalanced as to result in an advance payment.

43. *Mathematically Unbalanced Bid* means a bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

44. *May* denotes the permissive. Failure to comply with a "may" directive will generally not be a matter of responsiveness.

45. *Multiple-Award Contracts* means contracts which provide awards to more than one vendor for the same item. These contracts may be used by Purchasing only when it is determined by the Director of Purchasing that the use of more than one vendor is in the best interest of the County.

46. *Must* denotes the imperative. Failure to comply with a "must" directive will generally be a matter of responsiveness.

47. *Negotiations for Professional Services* means the act of determining terms, conditions, and prices for the performance of professional services. An appropriately-appointed negotiation committee shall negotiate with the top-ranked candidate from the competitive selection of

professional services firms, in an attempt to reach agreement on a contract for the provision of services to the County.

48. *Non-Expendable Supplies* means all tangible supplies having a value of over \$1,000.00 or more per unit, and a normal life expectancy of one year or more and all other tangible supplies designated as subject to formal inventory control.

49. *Open-End Contract* or *Designated Price Agreement* means a contract whereby an indefinite quantity of supplies, services, or construction is to be procured over an identified time span, as and when needed. This contract has an established unit price to be applied to releases from the governmental entity. The award authority is based on the current known requirements as indicated in the bid document.

50. *Open-End Purchase Order* means a purchase order whereby a Vendor provides supplies, services, or construction on demand or on a prescribed schedule not to exceed a period of 12 months or the Mandatory Bid Amount. An open-end purchase order may be used as a release and encumbrance document to authorize an agency to order any predetermined amount from an open-end contract on an as-needed basis.

51. *Person* means any business, corporation, partnership, individual, union, committee, club, organization, or group of individuals.

52. *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 supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

53. *Procurement Officer* or *Purchasing Agent* means any person duly authorized to enter into and make written determinations with respect to public procurement. The terms also include an authorized representative acting within the limits of authority.

54. *Professional Services* means any services where the County is obtaining advice, instruction, or specialized work from an individual specifically qualified in a particular area. Professional service may include a report, or written advice which may be lengthy; however, the main thrust of the service is not considered labor, but the exercise of intellectual ability. The procurement of professional services does not lend itself to normal competitive bidding and price competition alone. These services shall be procured by either a Request for Letters of Interest or Request for Proposals and Competitive Selection and Negotiation.

55. *Proposals (Request For)* or *RFP* means a solicitation for offers to provide a solution to a problem. An RFP is characterized by description of the desired results and a scale of how the proposals to obtain these results will be evaluated. RFP's include a price proposal which is a part of the evaluations unless the Consultants' Competitive Negotiation Act applies. Limited negotiation on any part of the RFP is permissible. The RFP includes all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

56. *Purchase Description* means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

57. *Purchase Order* means a purchaser's document to formalize a purchase transaction with a

vendor, conveying acceptance of a vendor's proposal. The purchase order should contain statements as to quantity, description, and price of the supplies, services, or construction ordered, and applicable terms as to payment, discounts, date of performance, transportation, and other factors or suitable references pertinent to the purchase and its execution by the vendor.

58. *Purchasing Agency* means any organization under the control of the Board of County Commissioners of Broward County, other than the Director of Purchasing, which is authorized by this Code or its implementing regulations, or by way of delegation from the Director of Purchasing, to enter into contracts.

59. *Purchasing Negotiator* is a county employee designated to conduct negotiations authorized by this Procurement Code.

60. *Public Procurement Units* means either a Federal, State, or local governmental unit or agency (including, without limitation, a city, school district, or special district) purchasing goods, services or construction, an external public or not-for-profit procurement unit, or the County Public Procurement Unit.

61. *Quotation (Request For)* or *RFQ* is an informal request for prices normally used for procurement below the mandatory bid amount. The Request for Quotations includes all documents, whether attached or incorporated by reference, included in a solicitation of quotations.

62. *Regulation* means a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describe organization, procedure, practice, or requirements.

63. *Resource Manager* means an officer of the Administrative Branch, designated by the Administrator, to provide guidance, control, and proper application of expertise in the procurement of selected items.

64. *Responsible Bidder* or *Offeror* means an offeror who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

65. *Responsive Bidder* means a person who has submitted a bid which conforms in all material respects to a solicitation. A bid or proposal of a Responsive Bidder must be submitted on the required forms, which contain all required information, signatures, notarizations, insurance, bonding, security, or other mandated requirements required by the bid documents to be submitted at the time of bid opening.

66. *Selection Committee* is a group of persons appointed as provided in this Code and regulations to designate a vendor or vendors to provide goods or services, or both, for a particular project by ranking them in preferential order or by some other method. "Selection Committee" shall also include "Selection/Evaluation Committee" and "Evaluation Committee."

67. *Services* means the furnishing of labor, time, and effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements but shall include both professional and general services.

68. *Shall* denotes the imperative.

69. *Should* denotes the permissive.
70. *Small Purchase* means any purchase below the mandatory bid amount.
71. *Sole Brand* means the only known brand or the only reasonable brand capable of fulfilling the needs of the County.
72. *Sole Source* means the only known vendor or the only reasonable vendor capable of providing a service or commodity to the County.
73. *Specifications* means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery. Specifications may also contain provisions for inclusion of factors which will lead to the ultimate calculation of lowest total cost. Specifications will, when practical, contain Life Cycle Costing (LCC), Total Cost Concept (TCC), Value Analysis (VA), or Value Engineering (VE). All specifications shall seek to promote overall economy for the purposes intended, and encourage competition in satisfying the County's needs and shall not be unduly restrictive.
74. *Supplies* means all property, including but not limited to, equipment, materials, printing, and insurance, excluding real property.
75. *Surplus*.
- (a) *Surplus Supplies* means supplies no longer having any use to the County. This includes, but is not limited to, obsolete or scrap material and non-expendable supplies that have completed their useful life cycle.
- (b) *Surplus Property* means surplus personal property as that term is defined by this Code, State, and County law.
76. *Two-Step Contracting Method* means a method of contracting whereby the vendors are solicited through a Request for Letters of Interest and only those vendors prequalified are allowed to either bid pursuant to an Invitation for Bids or submit a proposal pursuant to a Request for Proposals.
77. *Using agency* means any governmental body of the County which utilizes any supplies, services, or construction procured under this Code.
78. *Vendor* means an actual or potential supplier of an item, service, or construction.

(1988-0180, 1-12-88; 1990-1226, 4-24-90; 1995-0154, 2-7-95; 1998-1021, 10-6-98; 2001-1071, 10-23-01; 2002-685, 7-09-02; 2004-732, 8-24-04; 2006-401, 6-13-06; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.9. - Contingency Fees Prohibited.

Solicitations, contracts, and purchases made under this Procurement Code shall prohibit the payment of any compensation or other consideration to any person contingent upon or resulting from the award or making of a contract with Broward County other than a bona fide employee working solely for the vendor.

(2004-732, 8-24-04)

21.10—21.13. - Reserved.

PART II. - PROCUREMENT ORGANIZATION

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21.14. - Authority of the Director of Purchasing.

- a. *Principal Contracting Officer of the County.* The Director of Purchasing shall serve as principal procurement officer of the County.
- b. *Operational Procedures.* The Director of Purchasing may adopt operational procedures covering the internal function of the Purchasing Division. Additionally, the Director of Purchasing may delegate the rights, powers, and authority vested in the position to subordinate purchasing agents and other employees.
- c. *Duties.* Except as otherwise specifically provided in this Code, the Director of Purchasing shall, in accordance with the regulations promulgated:
 1. Procure or supervise the procurement of all supplies, services and construction for the Board of County Commissioners.
 2. Transfer or sell surplus supplies or property to other governmental agencies within the County, to the public by sealed bids, public auction, trade equipment on new purchases, or dispose of property in any other method consistent with the laws of Florida.
 3. Establish and maintain programs for the inspection, testing and acceptance of supplies or services.
 4. Operate a central warehouse for the purchasing, in bulk, of items which may be more economically bought and distributed than purchased on an individual basis; to provide facilities for storage of critically needed supplies and to store and dispose of surplus property.
 5. Approve all assignments or delegations of purchase orders and contracts.
 6. Execute all contracts and amendments within the Director's approval authority and agreements delegated by the Board of County Commissioners for the Director's execution. The

total amount of an amendment or amendments to a contract executed under this paragraph may not exceed \$400,000. An amendment must be signed by the appropriate award authority based on the total amount of the underlying agreement and all amendments, including any proposed amendment(s) pending execution by an appropriate award authority.

7. Have discretion to reject any and all vendor offers to a procurement solicitation after any vendor offer is opened, including those solicitations in which there is only one responsive vendor, except when a Selection Committee has been established. When a Selection Committee has been established, the responsiveness of vendor offers shall be determined as stated in Subsection 21.83.d of this Code.

(1988-0180, 1-12-88; 1990-2809, 9-11-90; 1998-1021, 10-6-98; 2002-685, 7-09-02; 2004-732, 8-24-04; 2005-290, 4-26-05; 2006-401, 6-13-06; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.15. - Delegation of Authority by the Director of Purchasing.

a. The Director of Purchasing may delegate in accordance with procedures set forth in Administrative Orders to various departments the authority to purchase specific items or classes of items, below Mandatory Bid Amount, if the Director of Purchasing deems it more advantageous to the County for such designated items to be purchased by an Agency rather than by the Central Purchasing Division. Delegated purchases will be processed under the same rules, regulations and Code provisions that govern the central procurement system. Delegation of purchasing authority will only be granted at the discretion of the Director of Purchasing after individuals within the Agency have satisfied the Director of Purchasing that they fully understand the existing rules, regulations and Code, and have passed a written test designed to ensure such knowledge.

b. The Director of Purchasing may delegate to any Agency of Broward County the authority to purchase from existing County, State or Federal contracts in any amount.

c. The Director of Purchasing is authorized to establish and administer a Purchasing Card program for efficient expenditures of funds within the guidelines of this Code.

1. County Commissioners are ineligible to participate in any County Purchasing Card Program.
2. Authorized County Commissioner's Aides and direct staff shall only use County Purchasing Cards to purchase airline tickets, pay registration fees, and confirm hotel reservations (though not pay hotel expenses), for approved travel for a County Commissioner or members of commission staff, and to purchase office supplies. Each Commissioner's office shall provide a copy of all requests for payment through a county purchasing card within 24 hours of use of the card, complete with copies of all documentation, to the County Auditor. For purposes of this subsection, "office supplies" means all consumables normally used in a governmental office and small equipment with a unit cost of \$100.00 or less. Any item of a decorative, capital or personal nature, including but not limited to the following are expressly prohibited: furniture, appliances, electronics, break room supplies including any type of food or drink and any item that is considered a luxury item not normally supplied by Broward County Government to all governmental employees.
3. Each individual authorized to use a County Purchasing Card shall sign an agreement which is to be retained on file with the Accounting Division. The agreement shall provide that the County Purchasing Card may be revoked upon discovery of the use of the card for any purpose other than authorized, shall authorize payroll deductions for repayment of any unauthorized use of a County Purchasing Card, and may provide for any other conditions deemed necessary by the Director of

Purchasing. The Director of Purchasing may revoke the authority to use a County Purchasing Card upon a finding that such revocation is in the best interest of the County.

4. The Director of Purchasing may reinstate the authority to use a County Purchasing Card upon a finding that such reinstatement is in the best interest of the County.

(1994-0052, 1-25-94; 2002-685, 7-09-02; 2005-290, 4-26-05; 2007-729, 10-23-07; 2011-696, 11-8-11)

21.16. - Transfer of Authority to Purchasing.

Except as otherwise provided in this Code, all rights, powers, duties and authorities relating to the procurement of supplies, services and construction and central warehousing, sale and disposal of supplies, services and construction now vested in or exercised by any governmental body of Broward County are hereby transferred to the Purchasing Division and the Director of Purchasing.

(1988-0180, 1-12-88)

21.17. - Authority to Contract for Certain Services.

Services of legal counsel other than the Office of the County Attorney shall be obtained in accordance with Section 2.10 of the Broward County Charter. A proper purchase order shall be issued for the acquisition of legal services.

(1998-1021, 10-6-98; 2004-732, 8-24-04)

21.18. - Exemptions.

All constitutional offices are exempted from the requirements of this Code with the exception of construction and related fields. The following supplies and services are exempted from this Code; however, they may be purchased by the Director of Purchasing, either competitively or noncompetitively up to the Director of Purchasing's award authority provided in this Code, as is in the best interest of the County, as determined by the Director of Purchasing. Any purchase of supplies and services exempted from the Procurement Code may be made only by the Board or by individuals specifically authorized to act for the Board in a specific acquisition. The exempted services and supplies are:

- a. Works of art for public places, and art design and conservation services.
- b. Copyright materials purchased by the Library Division for public use.
- c. Real property, real estate brokerage and appraising, options of title or abstracts of title for real property, title insurance for real property, and other related costs of acquisition or sale of real property.
- d. Subscriptions for library purchases only.
- e. Services provided directly to individual citizens.
- f. Utilities including but not limited to electric, water and telephone.
- g. Purchases of items for resale up to \$3,000 for the Library's Gift Shop.
- h. Licensed health professionals, e.g., Doctors, Nurses, Veterinarians who provide services

directly to patients.

- i. Expert witnesses and attorneys at law having a unique, specialized skill or knowledge of an area of legal practice as defined by state law.
- j. Corporate and media sponsorship agreements up to the mandatory bid amount.
- k. Training and educational courses, contracts between the County and governmental entities or nonprofit corporations, memberships, publications, meeting rooms, and hotels not covered by travel arrangements when any of the procurements listed above are below the mandatory bid amount.
- l. Lectures by individuals.
- m. Services provided by governmental agencies.
- n. Continuing education events or programs.
- o. Artistic services.
- p. Airport concessions and consumer service privileges issued pursuant to Chapter 26 of the Administrative Code.
- q. Lobbyists for governmental agencies or legislative bodies.
- r. Professional services for the County Auditor to be used in investigations or special projects of a limited duration, where the total costs of such services are below the mandatory bid amount.

(1994-0052, 1-25-94; 1995-0154, 2-7-95; 1998-1021, 10-6-98; 2001-1071, 10-23-01; 2002-685, 7-09-02; 2004-732, 8-24-04; 2011-696, 11-8-11)

21.19. - County Procurement Regulations.

- a. *Promulgation of Regulations.* Regulations shall be promulgated in accordance with Administrative procedure by the Director of Purchasing in accordance with the applicable provisions of the Administrative Code.
- b. *Existing Contracts Not Changed.* Regulations shall not change existing contract rights. No regulations shall change any commitment, right or obligation of the County or of a contractor under a contract in existence on the effective date of such regulation.

(1988-0180, 1-12-88)

21.20. - Collection of Data Concerning Public Procurement.

The Director of Purchasing shall cooperate with the Office of Management and Budget Services and County Auditor in the preparation of statistical data concerning the procurement usage and disposition of all supplies, services and construction. All using agencies shall furnish such reports as the Director of Purchasing may require concerning user needs and stock on hand.

(1999-0599, 4-13-99; 2007-729, 10-23-07; 2011-696, 11-8-11)

21.21. - Duties of County Attorney.

The County Attorney and authorized designee in that office shall serve as legal counsel and provide legal services to the Director of Purchasing as requested.

(1995-0154, 2-7-95)

21.22. - Contract Administration.

a. *Contract Administrator.* After the award of any contract, the Agency using the service, or in some cases the Resource Manager, will assume the role of Contract Administrator and will insure that both the County and the Vendor are in compliance with all terms and conditions of the contract including maintaining current insurance certificates. The Agency will maintain a written record of performance for each contract, including adherence to delivery requirements and specifications.

b. *Agency Maintains Delivery Information.* In cases where the Vendor does not adhere to delivery and specifications or is in technical breach of a contract, the Agency must attempt to rectify the situation with the Vendor and maintain written record of these attempts.

c. *Purchasing Responsibility to Remedy a Breach.* In cases where the Agency is unable to rectify a breach of contract with the Vendor, the matter shall be turned over to the Director of Purchasing, along with all documents for resolution which may include, but not be limited to, cancellation of the contract; recommendation to the Board that the Contract be canceled; suspension or debarment; or institution, through County Attorney, of appropriate legal action.

d. *Complaints from Vendors.* Vendors who believe they have been unfairly treated during the contract administration process may file a complaint with the Director of Purchasing after appealing to the Department Director of the Contract Administrator. Complaints shall be submitted in writing to the Director of Purchasing, stating the basis and facts of the complaint within seven (7) calendar days after the alleged unfair treatment. The Director of Purchasing shall investigate and determine the validity of the complaint.

1. If the complaint is not resolved by mutual agreement of the Director of Purchasing, the Contract Administrator, and the vendor, the Director of Purchasing shall promptly issue a decision in writing after consulting with the Office of the County Attorney. The decision shall state the reasons for the action taken.

2. A copy of this decision shall be mailed or otherwise furnished immediately to the complainant, the Contract Administrator, and any other party involved.

e. *Receiving and Inspection.* The Director of Purchasing may establish procedures for the receiving and inspection of deliveries of goods and services to determine their quality, quantity, and conformance to contract provisions.

f. *Audit of Procedures By Purchasing Authorized.* The Director of Purchasing may verify or audit the receiving procedures of any County Agency and may also assure that all Purchasing Authority delegated by the Director of Purchasing is being performed in accordance with the delegation instructions and the requirements of this Code.

g. *Assignments and delegations of contracts and purchase orders.* The Director of Purchasing shall establish procedures for approval of assignments and delegations of contracts and purchase orders. The Director of Purchasing will consult with the Office of Economic and Small Business Development

("OESBD"), or successor agency, concerning the impact on goal compliance from assignment or delegation of a contract or purchase order from a certified prime contractor to a non certified prime contractor. The Director of Purchasing shall not approve such assignment or delegation until the earlier of OESBD's response or five (5) business days after the request for OESBD review.

h. *Evaluation of performance of certain vendors.* The Director of Purchasing or Contract Administrator shall, for each contract above the award authority of the Director of Purchasing, evaluate construction and architect/engineer performance, including achievement of participation goals, and report same to the Board. A report to the Board is required prior to the release of final payment for vendors who have a weighted performance evaluation of 2.59 or below on two or more contracts over a five (5) year period. Evaluation of the achievement of participation goals must be done in conjunction with the Office of Economic and Small Business Development, or successor agency.

(1988-0180, 1-12-88; 1995-0154, 2-7-95; 1998-1021, 10-6-98; 2002-685, 7-09-02; 2004-732, 8-24-04; 2009-316, 4-28-09; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.23. - Vendor Performance Rating.

The Director of Purchasing is authorized to establish a vendor performance rating system for use in eliminating those vendors who fail to perform or perform unsatisfactorily in accordance with Section 21.119. Such rating system may be used for vendor evaluations and awarding of contracts where applicable. In the event that a vendor receives three (3) or more weighted performance evaluations of 2.59 or below over a five (5) year period, the Director of Purchasing is authorized to suspend a vendor for a period of three (3) months in accordance with Section 21.119. The vendor will be suspended from participating on County contracts as either a prime vendor or subcontractor/subconsultant. The Director of Purchasing shall provide a monthly vendor performance report to the Board.

(1988-0180, 1-12-88; 2009-316, 4-28-09; 2011-696, 11-8-11)

21.24. - Energy Efficient Policy.

The Purchasing Division will, at intervals, revise purchasing and procurement documents and specifications to assure that, when cost effective and consistent with operational needs, equipment purchased will be energy efficient. Energy efficient is defined as meeting Energy Star specifications or criteria that place products such as appliances, equipment and components in the upper 25% of energy efficiency, as well as meeting quality performance and durability requirements. The Facilities Maintenance Division of the Public Works Department will assist in implementing and monitoring compliance with this section of the Code.

(1999-0215, 3-2-99; 2011-696, 11-8-11)

21.25—21.28. - Reserved.

PART III. - SOURCE SELECTION AND CONTRACT FORMATION

[21.29. - Methods of Source Selection.](#)

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- [21.31. - Award.](#)
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- [21.50—21.52. - Reserved.](#)

21.29. - Methods of Source Selection.

All contracts shall be solicited by formal competitive sealed bidding pursuant to this PART and result in a purchase order for a firm, fixed price, except as provided in:

- a. Section 21.32. (Competitive Sealed Proposals)
- b. Section 21.33. (Small Purchases)
- c. Section 21.34. (Sole Source Procurement)
- d. Section 21.35. (Sole Brand Procurement)
- e. Section 21.39. (Emergency Procurements)
- f. PART VI. (Competitive Selection Procedures for Professional Services)
- g. Section 21.42. (Types of Contracts)

(1988-0180, 1-12-88; 2011-696, 11-8-11)

21.30. - Competitive Sealed Bidding.

- a. *Conditions for Use.* Offers equal to or over the mandatory bid amount shall be solicited by formal competitive sealed bidding except as otherwise provided in section 21.29. (Methods of Source Selection).
- b. *Invitation for Bids.* An Invitation for Bids shall be issued for each solicitation for offers equal to or exceeding the mandatory bid amount and shall include a purchase description, and all terms and conditions applicable to the procurement.
- c. *Public Notice.* Adequate public notice of the Invitation for Bids shall be given a reasonable time prior to the date set forth therein for the opening of bids. Such notice may include publication in a

newspaper of general circulation, posting on the Internet, or any other means of making requirements known to a large number of potential vendors, a reasonable time prior to bid opening. When public notice is required by Florida Statutes as being in the "Sunshine", the County will follow the advertising requirements stipulated in the Florida Statutes.

d. *Bid Opening.*

1. *Time of Receipt.* Bids must be received by the Purchasing Division no later than the time and date identified in the Invitation for Bids. Bids received after this time for any reason shall be returned to the bidder.

2. *All Bids Unopened.* If all bids are not opened at the appropriate time and date of the bid opening, for any reason other than failure of the vendors to present their bids or cause their bid to be presented at the appropriate time, the bid opening may occur at the next regularly scheduled bid opening date. This automatic extension of the bid opening time may occur without notice to bidders if there has been no other change in requirements or specifications other than the delay of opening of the bid. Any vendor submitting a bid after the delayed original time and date, but before the next regularly scheduled time and date for bid opening, shall have the bid accepted, opened, and fully considered for award.

3. *Bids Remain Unopened After Bid Opening Time.* If, after bids have been opened, it is ascertained that one or more bids remain unopened for any reason other than the failure of a vendor or vendors to present his or her bid or cause to have his or her bid presented at the appropriate time, the remaining unopened bids shall be opened and publicly read aloud at the next regularly scheduled bid opening date and time. No additional bids will be accepted after the original bid opening date and time.

4. *Public Bid Opening.* All bids received shall be publicly opened in the presence of one or more witnesses at the time and place designated in the Invitation for Bids.

e. *Bid Acceptance and Bid Evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award, excluding cash discounts, shall be objectively measurable, such as trade discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids.

f. *Correction, Cancellation, or Withdrawal of Bids.*

1. Addition to Bids.

(a) *Exceptions to Bid Requirements.* After bid opening, an otherwise low bidder shall not be permitted to delete exceptions to bid conditions or specifications which affect price or substantive obligations. However, such bidder shall be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.

(b) *Responsibility, Determination, with Additional Information.* Bidders may be asked to provide the Director of Purchasing with any information required to determine the responsibility of the vendor.

(c) Waiver of Technicality. Information shall not be considered after the bid opening if it has been specifically requested to be provided with the bid and becomes a matter of responsiveness. The bid shall be considered responsive only if it substantially conforms to requirements of the Invitation for Bids as it relates to pricing, surety, insurance, specifications, and any other matter unequivocally stated in the Invitation for Bids as a determinant of responsiveness. A minor or nonsubstantive lack of conformity on these matters may be considered a technicality or irregularity, which may be waived by the authority empowered to make the award. A minor or technical irregularity is a variation from the bid or proposal which does not affect the price of the bid or give the bidder an advantage or benefit not enjoyed by others, or does not adversely affect the interests of the County.

2. Correction of Bids.

(a) Mathematical Errors. Errors in extension of unit prices or in mathematical calculations may be corrected by the Purchasing Division prior to award. In all cases of errors in mathematical computation, the unit prices shall not be changed except in accordance with Section 21.30.f.

(b) Correction of Non-Judgmental Errors. A bidder shall be permitted to correct clerical, non-judgmental mistakes of fact in his or her bid, including unit prices, when the intended bid is reasonably proven by submission of proof of evidentiary value or is ascertained from the bid document.

(c) Voluntary Reduction of Price. The County may accept a voluntary reduction from a low bidder after bid opening, if such reduction is not conditioned on, nor results in, the modification or deletion of any condition contained in the Invitation for Bids. A voluntary reduction may not be used to ascertain the lowest responsive bid.

(d) Unsuccessful Bidders Not Permitted to Correct Bid Mistakes. No bidder shall be permitted to correct a bid mistake, with the exception of mathematical computation, which would cause such bidder to have the low bid and receive an award which otherwise would go to another vendor except in accordance with the provisions of Section 21.30.f.2.(b).

(e) Corrections After Award. Any corrections to the benefit of the vendor of a nonjudgmental, clerical and-or mathematical bid mistake after award shall only be permitted by the awarding authority; and any correction in prices may not permit the changed price to exceed the price of the next low bid.

3. Cancellation of Bids.

(a) Cancellation or Postponement of Bid Opening. Any time prior to the bid opening date and time, the Purchasing Division may cancel or postpone the bid opening or cancel the Invitation for Bid or any other County solicitation in its entirety.

(b) Rejection After Bid Opening. After any vendor offer is opened, any or all offers may be rejected by the Director of Purchasing or designee, including those bids in which there is only one responsive vendor, except when a Selection Committee has been established. When a Selection Committee has been established, the responsiveness of vendor offers shall be determined as stated in Subsection 21.83.d of this Code.

4. Withdrawal of Bids.

(a) Bid Amendments Prior to Opening. Any bidder may voluntarily withdraw or amend their bid at any time prior to the bid opening by providing written notice to the Director of Purchasing that their bid should not be considered or that their bid should be amended. Amendments should be forwarded to the Purchasing Division, in the same manner as the original bid.

(b) Bid Amendments After Opening. After bid opening, vendors shall not be allowed to withdraw a bid in less than one hundred twenty (120) days, or a specific time period stated in the Invitation for Bid with the following exceptions:

(1) Nonjudgmental Mistake. The bidder is alleging a nonjudgmental mistake of fact which is reasonably proven by submission of backup documentation of evidentiary value clearly showing that the mistake is clerical and nonjudgmental but the evidence is not clear enough for correction of unit price as provided in Section 21.30.f.2.(b).

(2) Prima Facie Evidence of Mistake. The bid is so outrageous as to be prima facie evidence of a bid mistake, but a mistake that cannot be corrected by correction of mathematical computation.

(c) Unilateral Withdrawal of a Bid. Any bidder who unilaterally withdraws a bid without permission before one hundred twenty (120) days have elapsed from the date of the Bid Opening or a time specified in the Invitation for Bids may be debarred in accordance with the applicable provisions of this Code. The Director of Purchasing may waive this debarment for cause.

5. Determination of Responsiveness and Responsibility. The determination of a non-responsible or non-responsive bidder or offeror and the permitting of withdrawals or corrections of bids and offers, in accordance with the directives of this Code, shall be the duty and responsibility of the Director of Purchasing except when a Selection Committee has been established. When a Selection Committee has been established, the responsiveness of vendor offers shall be determined as stated in Subsection 21.83.d of this Code. The Director of Purchasing shall only recommend award or cause award to be made to the responsive and responsible offeror of the best evaluated offer. All determinations of responsiveness and responsibility by the Director of Purchasing, or allowance for a change in or withdrawal of a bid or offer, shall be made in writing and maintained in an appropriate file in the Purchasing Division.

6. Unbalanced bids. A bid with extreme variations from the County's estimate, or where obvious unbalancing of unit or lump sum prices has occurred, shall be thoroughly evaluated. Where obvious unbalanced bid items exist, the Director's decision or recommendation to award or reject a bid shall be supported by written justification. A bid found to be mathematically unbalanced, but not found to be materially unbalanced, may be awarded. The Director of Purchasing may determine a materially unbalanced bid to be non-responsive.

(1988-0180, 1-12-88; 1998-1021, 10-6-98; 1999-0215, 3-2-99; 2001-1071, 10-23-01; 2002-685, 7-09-02; 2004-732, 8-24-04; 2005-290, 4-26-05; 2006-401, 6-13-06; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.31. - Award.

a. *Award Authority.*

1. A contract shall be awarded with reasonable promptness by written notice to the lowest

responsible and responsive bidder whose bid meets the requirements and award criteria set forth in the Invitation for Bids. Upon evaluation of bids for every public contract that involves the purchase of products or materials, the division or an agency shall identify the lowest responsive bidder and other responsible bidders who have certified that the products or materials contain at least the minimum percentage of recycled content or degradable material content that is set forth in the invitation for the bids. In awarding a contract for the purchase of products or materials, the division or an agency may allow up to a ten percent (10%) price preference to a responsive bidder who has certified that the products or materials contain at least the minimum percentage of recycled content or degradable material content. If a specific basis of award is not established in the Invitation for Bid, the award shall be to the responsible bidder with the lowest responsive bid meeting the written specifications.

2. The awarding authority shall only award a contract to an offeror who has certified that it will provide a drug-free workplace program by:

- (a) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the offeror's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- (b) Establishing a continuing drug-free awareness program to inform its employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The offeror's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- (c) Giving all employees engaged in performance of the contract a copy of the statement required by subsection 21.31(2)(a);
- (d) Notifying all employees, in writing, of the statement required by subsection 21.31(2)(a), that as a condition of employment on a covered contract, the employee shall:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) calendar days after such conviction.
- (e) Notifying Broward County government in writing within ten (10) calendar days after receiving notice under subsection (d)(2) above, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (f) Within thirty (30) calendar days after receiving notice under subsection (d) of a conviction, taking one of the following actions with respect to an employee who is convicted of a drug abuse violation occurring in the workplace:

- (1) Taking appropriate personnel action against such employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; and
 - (g) Making a good faith effort to maintain a drug-free workplace program through implementation of subsections (a) through (e).
3. The requirement in subsection a.2. above shall only apply to sealed proposals, competitive sealed bidding, and competitive selection for professional services if any of these listed are awarded by the Board of County Commissioners.
 4. All awards over \$250,000 per annum shall be awarded by the Board of County Commissioners, except as otherwise provided herein. All awards \$250,000 or less per annum and for a current known requirement of \$250,000 or less shall be made by the Director of Purchasing. The current known requirements shall be used to establish the award authority, and if actual usage is different, the award authority shall be adjusted at the next opportunity for rebidding. Any contract, exceeding \$400,000 on a multi-year basis with the same vendor, is to be awarded by the Board of County Commissioners. The Director of Purchasing may renew such contracts for as many renewal terms as contained in the contract, provided any single annual renewal amount or multi-year renewal amount does not exceed the award authority of the Director of Purchasing, unless authorized by the Board. All awards made pursuant to Section 21.36, Procurement from Contracts of Other Governments and Published Catalogs; Section 21.54, Standardization; and Section 21.135, Cooperative Purchasing; shall be made by the Director of Purchasing, in accordance with those sections cited.
 5. The application of local preference shall be made by the Board of County Commissioners or the Director of Purchasing in accordance with Section 1-74, et. seq., Broward County Code.
 6. All awards over \$250,000 per annum or more which may involve the applicability of the bidding preference for contractors who provide for benefits for domestic partners, authorized by Section 16 ½-157, Broward County Code, shall be made by the Board of County Commissioners. To be eligible for the domestic partnership benefits preference authorized by Section 16 ½-157, Broward County Code, a contractor's domestic partnership benefits program must provide benefits which are the same or substantially equivalent to those benefits offered to the contractor's other employees. A contractor will be deemed ineligible for the domestic partnership benefits preference if its domestic partnership benefit program discriminates against employees in violation of the Broward County Human Rights Act.
 7. No contractor shall receive more than one County-authorized preference for the same procurement. If a contractor is eligible for more than one County-authorized bid preference for a particular procurement, the contractor shall be eligible to receive only the bid preference that is most favorable to the contractor.
 8. Sole source and emergency procurements shall be exempt from application of any County preferences.
 9. The Director of Purchasing is authorized to approve and execute amendments to contracts, regardless of the awarding authority, if the total amount of the amendment does not exceed the

Director of Purchasing's award authority based upon the total value of all amendments.

b. *Execution of Formal Two-Party Contracts.*

1. All contracts awarded by the Board of County Commissioners shall be signed by the Mayor, Vice Mayor, or as otherwise provided.
2. The County Administrator or the Director of Purchasing shall have the ability to sign on behalf of the Board any agreement or contract for any procurement, whether included or excluded under this Code, \$250,000 or less per annum, excluding Professional Services which is limited to \$100,000 or less per annum. All contracts awarded under this section shall be signed by the County Administrator or the Director of Purchasing. Any contract, exceeding \$400,000 for goods and/or general services or exceeding \$200,000 for professional services, on a multi-year basis with the same vendor, is to be awarded by the Board of County Commissioners.

c. *Criteria for Breaking Ties—Bids.* If two or more bidders are tied, the tie may be broken and the successful vendor selected by the following criteria presented in order of importance and consideration as documented in the vendor's response to the solicitation.

1. Vendor located within Broward County.
2. Vendor which provides domestic partner benefits.
3. Vendor providing the most advantageous delivery time if provided in the bid by the bidders.
4. Vendor that has the lowest dollar volume of work previously awarded by the County over a five (5) year period from the date of the bid submittal.

For purposes of this tiebreaker, to be considered a vendor located in Broward County, a vendor must be (1) in existence for at least six months prior to the solicitation opening; (2) at a business address physically located within Broward County; (3) in an area zoned for such business; (4) providing services from this location on a day-to-day basis; and (5) providing services from this location that are a substantial component of the services offered.

d. *Criteria for Breaking Ties—RLI and RFP.* If two (2) or more ranked vendors are tied and it is necessary to break the tie, the tie shall be broken and the higher ranked vendor or vendors shall be selected by the following criteria presented in order of importance and consideration as documented in the vendor's response to the solicitation:

1. Vendor located within Broward County as set forth in Subsection 21.31.c.
2. Vendor which provides domestic partner benefits.
3. Vendor that has the lowest dollar volume of work previously awarded by the County over a five (5) year period from the date of the submittal.
4. A re-vote or re-assessment of only the tied vendors.
5. Preference to vendor receiving a majority of the total first-place votes.

e. *Authority to Reduce Scope of Construction Projects and Negotiate.* In the event all bids for a construction project exceed available funds, as determined by the Administrator, and the low

responsible bid does not exceed such funds by more than 5%, the Administrator is authorized, where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate, or to designate a person to negotiate for the County, an adjustment of the bid price, including changes in the bid requirements of the low, responsive and responsible bidder, in order to bring the bid within the amount of available funds.

f. *Authority to Award to Second Low Bidder After Cancellation of Contract.* If within one hundred twenty (120) days after bids are opened, or any period bids are required to remain firm as prescribed in the Invitation for Bid, the Contract of the lowest responsible vendor is canceled, the Awarding Authority may elect to award the contract to the next low responsible bidder. After the one hundred twenty (120) day period or alternate period prescribed in the Invitation to Bid, the Awarding Authority may award to the next low responsible bidder provided:

1. A determination is made that it is in the best interest of the County to award based on the present bids rather than rebid, and
2. The next low responsible bidder agrees, in writing, to the extension of the bid price for the additional period of time.

g. *Contract Extension/Renewal.* All invitations for bids for Open-End contracts shall, when practical, provide for an extension/renewal of the contract for a specified time period, upon mutual consent of the buyer and seller and a written analysis by the Purchasing Division that extension/renewal is in the best interest of the County. No contract shall be renewed beyond five (5) years without the express consent of the Board.

h. *Price Adjustment.* Contract may be awarded with provisions for upward or downward price adjustments provided this allowance is part of the original bid solicitation and the adjustments are based on a nationally recognized or published index or other criteria acceptable to the Director of Purchasing.

i. *Cancellation of Solicitation.* A request for solicitations may be canceled and/or any or all responses to solicitations may be rejected in whole or in part when it is in the best interests of the County. The reasons therefore shall be made part of the purchasing file. After solicitations are opened, such rejection shall be made by the Director of Purchasing.

j. *Cancellation of Contracts.* The awarding authority of the contract has the authority to cancel the contract.

k. *Software Acquisition.* Notwithstanding any other provision of this Code, any procurement of computer application software or a software license subject to Section 22.148.c of the Broward County Administrative Code requiring inspection and testing by the Office of Information Technology, must have as part of the contract or as an accompanying contract an agreement for maintenance for a minimum period of five (5) years. If it is impossible to meet the requirements of obtaining a five (5) year maintenance contract with each purchase, the awarding authority will be made aware of the reason for failure to obtain the requisite maintenance contract and may make an award which is in the best interest of the County.

(1988-0180, 1-12-88; 1991-0355, 3-12-91; 1992-0734, 4-14-92; 1995-0154, 2-7-95; 1998-1021, 10-6-98; 1999-0596, 4-13-99; 1999-0816, 6-15-99; 2001-1071, 10-23-01; 2002-685, 7-09-02; Ord. No. 2003-572, 8-12-03; 2004-732, 8-24-04; 2005-290, 4-26-05; 2007-729, 10-23-07; 2008-310, 5-13-08; 2009-316, 4-28-09; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.32. - Competitive Sealed Proposals.

- a. *Conditions for Use.* If it is not practical nor advantageous to procure any specific supplies, services, or construction by competitive sealed bidding, or Request for Letters of Interest, the Director of Purchasing may determine that the use of competitive sealed proposals may be used. Competitive sealed proposals shall be the preferred method to obtain general service when the award is to be based upon evaluation of price, quality, experience of the vendor, and other factors.
- b. *Request for Proposals.* Proposals shall be solicited through a request for proposals which should state as near as possible the functional or performance specifications for the end results being sought. Proposals shall be received, opened, and processed in the same manner as bids discussed in Section 21.30.d. Requests for proposals may be corrected, withdrawn, and canceled in the same manner as bids discussed in Section 21.30.f.
- c. *Public Notice.* Adequate public notice of a Request for Proposal shall be given in the same manner as provided in Subsection 21.30.c., Competitive Sealed Bidding—Public Notice.
- d. *Evaluation Factors.* The Request for Proposals shall state the relative importance of all evaluation factors, including price if CCNA does not apply, in an exact numerical fashion, stating the number of points each evaluation factor may receive. In addition, certain items may be rated in accordance with their importance and classified as mandatory, desirable, or highly desirable. Only criteria disclosed on the solicitations may be used to evaluate the items or services proposed.
- e. *Discussion with Responsible Offerors and Revisions to Proposals.* As provided in the Request for Proposals, discussions may be conducted with responsible offerors whose submitted proposal is determined to be reasonably susceptible of being accepted for award, for the purpose of clarification to assure full understanding of responsiveness to the solicitation requirement. Offerors shall be afforded fair and equal treatment with respect to any opportunity for discussion to clarify a proposal.
- f. *Award of Proposals.* Award shall be made to the responsive, responsible offeror whose proposal is determined, in writing, to be the most advantageous to the County, taking into consideration the evaluation factors set forth in the Request for Proposals. The contract file shall contain the reasons for the award, including the evaluations of all persons rating the proposals.

(1988-0180, 1-12-88; 1994-0052, 1-25-94; 2004-732, 8-24-04; 2011-086, 3-8-11)

21.33. - Small Purchases.

Any procurement below the mandatory bid amount may be made by the Director of Purchasing provided that procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. Small purchases may be made by the Purchasing Division or delegated to any department or division qualifying for such delegation by passing prescribed, written examinations to prove their understanding and ability to utilize the procurement system.

(1988-0180, 1-12-88)

21.34. - Sole Source Procurement.

A contract within the award authority of the Director of Purchasing may be awarded for supplies, services or construction without competition when the Director of Purchasing or the Director's designee, determines in writing there is only one source or one reasonable source for the required supply, service or construction. A Sole Source Procurement above the award authority of the Director of Purchasing

must be approved and awarded by the Board after solicitation of offers in any manner deemed to be in the best interest of the County by the Director of Purchasing. If it is determined by the Director of Purchasing that a sole source procurement must be made by negotiations involving complex terms and conditions and requiring a two party agreement, such negotiations shall be noticed pursuant to Section 286.011, Florida Statutes, as amended.

(1995-0154, 2-7-95; 2001-1071, 10-23-01; 2004-732, 8-24-04; 2005-290, 4-26-05; 2011-696, 11-8-11)

21.35. - Sole Brand Procurement.

A contract within the award authority of the Director of Purchasing may be awarded for supplies, services or construction, limiting competition to a sole brand if the necessity for this brand is certified in writing by the Director of Purchasing or the Director's designee. A Sole Brand Procurement above the award authority of the Director of Purchasing must be approved and awarded by the Board after the Director of Purchasing solicits quotes, bids, RFP's, RLI's or uses any other method of procurement that the Director of Purchasing deems advantageous to the County.

(1995-0154, 2-7-95; 2001-1071, 10-23-01)

21.36. - Procurement from Contracts of Other Governments and Published Catalog Prices.

The Director of Purchasing may purchase directly, without bid or quotations, from GSA contracts, or from offers whose price exactly equals GSA contracts from vendors awarded such GSA contracts, or from federal, state or local contracts when the contract expressly permits or if the awarding jurisdiction and/or the vendor agree to allow the County to purchase therefrom. In cases where an award is made on a price equaling GSA pricing, terms and conditions agreeable to the Director of Purchasing may be used in lieu of the GSA terms and conditions.

(1998-1021, 10-6-98; 2001-1071, 10-23-01)

21.37. - Open-End Contracts.

The Director of Purchasing shall issue open-end contracts as necessary and reasonable, based on competitive bids. The estimated annual usage shall govern the proper authority for awards of these contracts; however, if the estimate should prove inaccurate, the awarded contract is valid and the awarding authority shall be changed to conform with the historical information available during the next bidding of the contract.

(1988-0180, 1-12-88)

21.38. - Open-End Purchase Orders.

a. The Director of Purchasing may issue an open-end purchase order based, if possible, on competitive quotations to procure items on an as needed basis provided the aggregate amount is below the mandatory bid amount and the order is not issued for over a twelve month period of time.

b. The Director of Purchasing may issue a purchase order for any amount to encumber funds from which an agency may order items covered by an open-end contract.

(1988-0180, 1-12-88)

21.39. - Emergency Procurements.

a. The Director of Purchasing or the Director's designee may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, safety, property, or other substantial loss to the County. All emergency procurements shall be made with such competition as is practical under the circumstances. The department director, or the director's designee, for the division requesting the emergency shall provide, prior to the issuance of a purchase order, a written account of the emergency detailing the complete circumstances of the emergency situation and the probable consequences if an emergency procedure is not instituted. If other than a low vendor is selected, there shall be a written determination by the Director of Purchasing or the Director's designee in the contract file as to why the mathematically low vendor was not selected.

b. Any emergency procurement exceeding the award authority of the Director of Purchasing shall be reported to the Board along with a written account of the emergency circumstances from the Department Director or designee of such Department Director for the using agency, to be noted for the record. Any increase over the original amount of an emergency procurement reported to the Board, exceeding 10% (ten percent) must be reported to the Board to be noted for the record.

c. The Board of County Commissioners shall declare a valid public emergency for any service covered by C.C.N.A. prior to the institution of any emergency procurement action. Only the Board is empowered to waive any or all requirements of C.C.N.A.

(1995-0154, 2-7-95; 1988-0180, 1-12-88; 2001-1071, 10-23-01; 2004-732, 8-24-04)

21.40. - Direct Purchases from Open-End Contracts.

The Director of Purchasing may issue orders, including open-end purchase orders and open-end contracts, or authorize agencies to issue orders direct to vendors for items covered by open-end contracts awarded by the State of Florida, cities, GSA contracts, or other public procurement units.

(1998-1021, 10-6-98)

21.41. - Determination of Nonresponsibility.

a. The written determination of nonresponsibility of an offeror, including a bidder or proposer, must be made in writing by the Director of Purchasing or the Director's designee. The unreasonable failure of an offeror to supply information in connection with an inquiry into responsibility may be grounds for a determination of nonresponsibility of such a bidder, offeror, proposer, or vendor. In awards made by the Board of County Commissioners, the Director of Purchasing's determinations under this section shall be advisory, and the Board's determinations shall be final.

b. The Director of Purchasing or the Director's authorized designee may, within a reasonable time period after bid or proposal opening, request additional information of the offeror concerning his or her responsibility to perform and the offeror may voluntarily, after bid opening, provide additional or corrective information concerning his or her responsibility as a vendor. Notwithstanding the foregoing, the Director of Purchasing or designee cannot consider additional or supplemental information provided by a bidder, offeror, proposer or vendor which amends, alters, explains, varies or contradicts unequivocal statements or false or misleading statements made by a bidder, offeror, proposer or vendor to render that bidder, proposer, offeror or vendor responsible. The Director of Purchasing shall consider this and all other information gained prior to the time of the award or rejection in making his or her determinations of award and-or recommendations concerning award to the Board of County

Commissioners.

c. The awarding authority may consider any unresolved concern regarding an offeror, including a bidder or proposer, prior to making an award. At any time prior to award, the awarding authority may find that an offeror is not responsible to receive a particular award. The awarding authority may consider the following factors, without limitation: debarment or removal from the authorized vendors list or a final decree, declaration or order by a court or administrative hearing officer or tribunal of competent jurisdiction that the offeror has breached or failed to perform a contract, claims history of the offeror, performance history on a County contract(s), an unresolved concern, or any other cause under this code and Florida law for evaluating the responsibility of an offeror.

(1999-0215, 3-2-99; 2011-696, 11-8-11)

21.42. - Types of Contracts.

a. Any type of contract or procurement method which will promote the best interest of the County may be used, including incentive fee contracts, provided that the use of a cost plus a percentage of cost contract is prohibited. Any type of procurement method may be utilized to obtain any professional service, general service, or commodity at the discretion of the Director of Purchasing. A type of contract other than firm, fixed price may be used only when a determination is made by the Director of Purchasing that such contract is likely to be less costly than the firm, fixed price contract or that it is impractical to obtain the supplies, services or construction required by the firm fixed price contracting method.

b. The use of rotating lists shall be authorized for the procurement of services which have sufficient variables in their pricing equation to preclude detailed specifications and firm lump-sum pricing or to those services provided by businesses which do not normally provide competitive quotations on professional, ethical, or other grounds.

c. The County should use, except in projects with undefined scope, a stipulated lump sum method of compensation in contracts for architectural-engineering services. This subsection shall not apply if there is a written determination made by the using agency director that a lump sum type of compensation is not viable for the specific project, or an element of a specific project.

d. Qualified Lists. The Board may establish lists of qualified vendors for various goods and/or services, with individual awards to be based upon informal quotations obtained in a manner established by the Director of Purchasing, and award of individual contracts made by the appropriate awarding authority. The Director of Purchasing will consult the County Attorney's office for legal requirements to include in solicitations to assemble a qualified list.

(1995-0154, 2-7-95; 1997-1209, 11-18-97; 1998-1021, 10-6-98; 2002-685, 7-09-02; 2011-696, 11-8-11)

21.43. - Specific Period.

Unless otherwise provided by law, a contract for supplies or services may be entered into for no more than five (5) years without the express consent of the Board. If a right or option to extend the contract is included in the solicitation and funds are available for the first fiscal period at the time of contracting, funds for the extended term shall not be required to be available at the time of contracting. Payment and performance obligations for future fiscal periods shall be subject to the availability of funds. Any lease or lease purchase contract which is paid from ad valorem tax funds shall not exceed two (2) fiscal years.

(1988-0180, 1-12-88; 2004-732, 8-24-04)

21.44. - Approval of Contracts by County Attorney.

All formal multiple party contracts covered by this Code above \$5,000 shall be approved as to form by the Office of the County Attorney, prior to award by the Director of Purchasing or designee, or the recommendation of award. This requirement for approval as to form does not include any contract whereby an offer is made in response to a solicitation from the County and an acceptance is made pursuant to the terms and conditions contained in the solicitation. This requirement in no manner prohibits the Director of Purchasing from requesting approval as to form and legal sufficiency from the Office of the County Attorney for any transaction of the Purchasing Division.

(1988-0180, 1-12-88; 1995-0154, 2-7-95; 2001-1071, 10-23-01)

21.45. - Advance Payments.

a. The County may make advance payments not to exceed one (1) year to vendors for maintenance or service contracts based upon the following schedule when it would be economically efficient to do so or when the vendor offers a discount for advance payments:

Contract Amount	Payments
\$0 to \$2,000	Total advance payment up to 1 year
\$2,001 to \$4,000	Semiannual payments
\$4,001 to \$8,000	Quarterly payments
\$8,001 and over	Monthly payments

b. The Director of Purchasing shall approve advance payments in accordance with the above requirements and internal procedures.

c. If the Director of Purchasing determines that it would be in the best interest of the County to exceed the prepayment list limits set forth above, the vendor shall be required to obtain a bond guaranteeing performance whenever the \$2,000.00 advance payment limit is exceeded.

d. The following commodities are specifically exempted from the Advance Payment prohibitions:

1. Insurance and Bonding.
2. Software licenses, software maintenance, and software support services.
3. Subscriptions.
4. Memberships.
5. Registrations.
6. Payments to any agency of the State of Florida or the federal government.

(1988-0180, 1-12-88; 1995-0154, 2-7-95; 1998-1021, 10-6-98; 2005-290, 4-26-05; 2011-696, 11-8-11)

21.46. - Change Orders.

Changes to contracts issued by the Director of Purchasing may be made by issuance of a Change Order (and other related contractual documents, if any). Except as otherwise provided in this Code, the Director of Purchasing may issue Change Orders to correct errors, omissions, or discrepancies in contract documents; cover acceptable overruns and freight costs; incorporate requirements to expand or reduce the scope of goods or services ordered; or to direct other changes in contract execution to meet unforeseen field, regulatory, or market conditions.

(1988-0180, 1-12-88)

21.47. - Amendments.

Any changes to a contract that alter the terms and conditions of the contract or provide for a change in the scope of the contract must be contained in a formal amendment to the contract. Such amendment must be signed and approved by an individual having the authority to sign based on the total amount of the amendment, regardless of the authority who awarded the original contract. Such individual may not approve or sign an amendment or amendments to the contract the total amount of which is greater than \$400,000.

(1988-0180, 1-12-88; 2002-685, 7-09-02; 2004-732, 8-24-04)

21.48. - Addenda.

Any additional directions or modifications to the Invitation for Bids, Request for Letters of Interest, or Request for Proposals shall be issued as separate documents identified as changes to the Invitation for Bids, Request for Letters of Interest, or Request for Proposals. In order for a bidder or proposer to be considered responsive, all addenda must be signed and returned with the response to the Invitation for Bids, Request for Letters of Interest, or Request for Proposals unless the Addenda explicitly provides otherwise.

(1990-1226, 4-24-90; 2011-086, 3-8-11)

21.49. - Misrepresentation by Vendors.

The discovery of misrepresentations by any vendor to the County in response to a solicitation for a procurement shall be referred to the County Attorney's Office. The County Attorney shall refer the matter to the State Attorney's Office for criminal prosecution, if appropriate.

(2002-685, 7-09-02)

21.50—21.52. - Reserved.

PART IV. - SPECIFICATIONS

[21.53. - Open Competition Required.](#)

[21.54. - Standardization.](#)

[21.55. - Relationships with Using Agencies.](#)

[21.56. - Exceptions to Standardized Items.](#)

[21.57. - Application of Requirements for Nonrestrictiveness of Specifications.](#)

[21.58—21.62. - Reserved.](#)

21.53. - Open Competition Required.

The Director of Purchasing shall strive to assure that all specifications issued by the County provide for free and open competition among all vendors and preclude a lock-in of any brand or vendor, unless items are purchased under sole source or sole brand provisions. Any specification may eliminate some vendors or brands if the vendor or brand does not meet the legitimate needs of the County.

(1988-0180, 1-12-88)

21.54. - Standardization.

a. The Director of Purchasing is responsible for the standardizing of types of commodities used throughout the County provided the cost of such items are within the award authority of the Director of Purchasing.

b. Purchase of items standardized by the Board of County Commissioners do not have to be awarded by the Board, but may be awarded by the Director of Purchasing, regardless of the contract amount.

c. The Director of Purchasing may recommend to the Board for purchases over the award authority of the Director of Purchasing that any brand or source of supplies or services be standardized as the only brand or source of service or commodity that will be purchased for a particular agency or County-wide. Competition among distributors of a standardized brand will be attained if possible. However, the Director of Purchasing may purchase directly, without competition, from a standardized, sole source or obtain as much competition as possible, in any method determined by the Director of Purchasing to be in the best interest of Broward County, any standardized sole brand commodity or service. Such purchase does not have to be awarded by the Board of County Commissioners, but may be made by the Director of Purchasing regardless of contract amount.

d. The Director of Purchasing will promulgate procedures for annual review of all standardized items exceeding the award authority of the Director of Purchasing.

e. The Director of Purchasing may de-standardize any commodity or service, regardless of the source of original standardization, if a determination is made that the commodity or service is no longer required or may be made competitively.

(1994-0052, 1-25-94; 2001-1071, 10-23-01; 2011-696, 11-8-11)

21.55. - Relationships with Using Agencies.

The Director of Purchasing shall obtain expert advice and assistance from personnel of using agencies in development of specifications and standardization of commodities. The Director of Purchasing will review specifications written by Agencies to assure that the specifications allow for open and free competition, and that those specifications which eliminate some brands or vendors do so to reasonably meet the needs of the County.

(1988-0180, 1-12-88)

21.56. - Exceptions to Standardized Items.

If any County Agency believes they would be better served by purchasing a brand or service different than contained in an existing Countywide contract or items standardized by the Director of Purchasing or the Board, they may request that an exemption to the standardization be granted by the Director of Purchasing. In any case where a County agency is denied an exemption, they may appeal to the Administrator for a deviation.

(1988-0180, 1-12-88)

21.57. - Application of Requirements for Nonrestrictiveness of Specifications.

Requirements of this Part regarding the purpose and nonrestrictiveness of specifications shall apply to all specifications including but not limited to those prepared by architects, engineers, designers and draftsmen for public contracts.

(1988-0180, 1-12-88)

21.58—21.62. - Reserved.

PART V. - PROCUREMENT OF CONSTRUCTION SERVICES

[21.63. - Authority to Contract for Construction Services.](#)

[21.64. - Responsibility for Selection of Methods of Construction Services.](#)

[21.65. - Adoption of Construction Specifications Institute \(CSI\) Manual of Practice.](#)

[21.66. - Bonds and Security Requirements.](#)

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[21.71. - Liquidated Damages.](#)

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[21.73. - Right of Construction Contract Change.](#)

[21.74. - Construction Contracting; Two-Step Method.](#)

[21.75, 21.76. - Reserved.](#)

[21.77. - Design/Build Contracts.](#)

[21.78—21.81. - Reserved.](#)

21.63. - Authority to Contract for Construction Services.

The authority for contracting for construction services is vested in the Board of County Commissioners, and shall be exercised through the provisions of the Procurement Code.

(1988-0180, 1-12-88)

21.64. - Responsibility for Selection of Methods of Construction Services.

The Director of Purchasing shall use the best method available for obtaining and implementing

construction contracting which may include:

- a. General Contractor.
- b. Construction Management.
- c. Multiple prime contractors managed by:
 1. A designated general contractor.
 2. Construction manager.
- d. Design Build.
- e. Government furnished materials for Construction Contracting. Note that when this method of Construction Contracting is utilized, an automatic waiver of this Procurement Code for the purchase of the materials is granted by the Board of County Commissioners.
- f. Any other commonly accepted construction method utilized by government or industry which may be used to the benefit of the County.

(1988-0180, 1-12-88; 1990-1134, 4-24-90; 1993-0708, 10-1-92)

21.65. - Adoption of Construction Specifications Institute (CSI) Manual of Practice.

The CSI Manual of Practice is adopted by Broward County as a standard body of guidance for use in the development and administration of construction contracts to the degree that it does not contravene existing Federal, State of Florida or local laws, rules or regulations or forms developed by the Office of the County Attorney. It is not intended that the contents of the CSI Manual of Practice be a directive, but rather that its recommendations, suggestions, and other contents be used as a focal point for increasing the uniformity and quality of the practices and procedures of Broward County concerning its subject matter.

(1993-0708, 10-1-93)

21.66. - Bonds and Security Requirements.

- a. *Bid Security.*
 1. *Requirement for Bid Security.* Bid security shall be required on all competitive sealed bidding for construction contracts when the price of the project is estimated to exceed a specific amount to be determined by Administrative regulation. The bid security shall be a bond provided by a surety company authorized to do business in this State, or the equivalent in cash, certified check, cashiers check, unconditional letter of credit issued by a domestic bank authorized to do business in the State of Florida, or an alternate form of security for the same purpose subject to the same conditions and in a form acceptable to the Office of the County Attorney as the bid security.
 2. *Amount of Bid Security.* Bid security shall be in a percentage amount determined by the Director of Purchasing of the total amount of the bid exclusive of alternates.
 3. *Rejection of Bids for Noncompliance with Bid Security Requirement.* When the invitation for bids require bid security, noncompliance requires the bids be rejected unless it is determined that the bid fails to comply in a non-substantial manner with the security requirements. Failure to

supply bid security with the bid at the time of the bid opening shall automatically disqualify the bidder as non-responsive to the requirements.

4. *Withdrawal of Bids.* After bids are opened, they shall be irrevocable for the periods specified in invitation for bids, except as provided in Section 21.30.f.4.(b) of this Code. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid security.

b. *Contract Performance and Payment Bonds.* When a contract (as covered by the Procurement Code) is awarded in excess of an amount to be established by Administrative regulation, the following bond or security shall be delivered to the County and shall become binding on the parties upon the execution of the contract.

1. A performance and payment bond satisfactory to the County, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the County in an amount equal to 100% of the price specified in the contract shall be presented to the County prior to issuance of a contract document.

2. In lieu of a performance and payment bond the County may accept cash, money order, certified check, cashiers check, or irrevocable letter of credit in the amount of 100% of the contract price. Such alternate form of security shall be for the same purpose and shall be subject to the same conditions as a performance and payment bond.

3. *Reduction of Bond Amount.* The Director of Purchasing may reduce or eliminate the amount of performance and payment bonds required on a specific contract valued up to \$200,000. The reasons for such reduction shall be contained in the permanent purchasing file. Disclosure of the reduction shall be present in the Invitation for Bids. In the event of Reduction of Bond Amount, adequate retainage will be required.

4. *Authority to Require Additional Bonds.* Nothing in this section shall be construed to limit the authority of the Director of Purchasing to require a performance bond or other security in addition to those bonds or in circumstances other than those specified in this Code.

5. When a performance and payment bond (or other security) is required by the Director of Purchasing, the bonds (or other security) shall remain in effect for the duration of the contract unless otherwise provided in the contract. If the contract is extended or renewed, it shall be subject to the same bonding (or other security) requirements.

(1988-0180, 1-12-88; 1993-0708, 10-1-93; 1995-0154, 2-7-95; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.67. - Insurance Requirements.

All construction contracts shall contain requirements for the protection of the County through sufficient insurance as specified by staff specializing in Risk Management. The form of all such insurance certificates shall be approved by staff specializing in Risk Management, prior to the issuance of purchase orders confirming the award of a construction contract.

(1998-1021, 10-6-98)

21.68. - Indemnification.

All contractors shall indemnify and hold harmless the county, its officers and employees, from liabilities,

damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and person employed or utilized by the contractor in the performance of services for the county.

(1988-0180, 1-12-88; 2001-1071, 10-23-01; 2002-685, 7-09-02)

21.69. - Forfeiting of Bonds.

All contracts for construction services shall contain a clause allowing termination on default of the contractor and providing that in such cases the surety company shall bear the responsibility for the completion of the contract, or if no surety company has provided a performance bond, the County may claim the alternate to the performance and payment bond and use such funds for the completion of the contract.

(1988-0180, 1-12-88)

21.70. - Termination for Convenience.

All construction contracts for Broward County shall contain clauses allowing for the termination of the contract for convenience and prescribe methods in which the vendor may calculate cost of work already performed, and termination settlement costs.

(1988-0180, 1-12-88)

21.71. - Liquidated Damages.

All construction contracts over an amount to be established by Administrative Regulations shall require liquidated damages provisions contained therein that provide for an amount reasonable to the project be deducted from payment to the contractor for failure to complete the project within the contract time frame.

(1988-0180, 1-12-88)

21.72. - Modification of Required Clauses.

The Director of Purchasing, with the concurrence of the Office of the County Attorney, may add, delete or vary clauses in construction contracts as may be necessary to obtain the best proposal for the County.

(1993-0708, 10-1-93)

21.73. - Right of Construction Contract Change.

a. *Field Orders.* The Contract Administrator may approve and issue Field Orders setting forth written interpretations of the intent of contract documents and ordering minor changes in contract execution providing the field order involves no change in contract sum or contract time and an architect or engineer co-signs the Field Order.

b. *Supplemental Instructions.* Architects and engineers either employed by or under contract with the County for construction contracts for which they have some level of supervisory or monetary responsibility may approve and issue supplemental instructions in writing orders, instructions, or interpretations, provided they make no major change in contract interpretations, contract execution, and

involve no change in contract sum or contract time.

c. *Change Orders.* The County shall have the right, based on a clause contained in each construction contract, to require changes in quantities, additions or deletions of work or other changes within the original intent of the contract. Each construction contract shall have an initial amount budgeted for change orders equal to 5% of the total contract amount which can be administratively approved. Any larger percentage must be approved by the Board of County Commissioners when the corresponding additional allowance exceeds ten percent (10%) of the original contract amount or \$100,000. The Director of Purchasing may approve a change order allowance increase up to no greater than ten percent (10%) of the original contract amount or \$100,000, whichever is less. All changes to construction contracts must be approved in advance in accordance with the value of the change order or the calculated value of the time extension. All contract change orders of \$250,000.00 or more shall be approved, in advance, by the Board. The approval of change orders under this amount is hereby delegated to the Director of Aviation, the Director of Port Everglades, and the Director of Public Works for their respective projects. The Director of Aviation, the Director of Port Everglades, and the Director of Public Works shall promulgate regulations through the County Internal Policies and Procedures Manual or the Administrative Code prior to delegation of any change order approval authority to their staff. All construction change orders shall be submitted to the Office of the Director of Aviation, the Director of Port Everglades, or the Director of Public Works, as applicable, complete with explanations, back-up information, and a detailed breakdown of charges for review and recommendation for approval. All change orders must contain the reason for the change and provide sufficient documentation to verify the reasonableness of any time extensions granted or prices charged in the change order.

d. *Amendments.* All changes to construction contracts that alter the terms and conditions of the contract or provide for a change in scope of the project beyond the original intent, must be contained in a formal amendment to the contract. Such an amendment must be of equal dignity and formality as the original contract and signed by the appropriate awarding authority based on the total amount of the amended contract, regardless of the authority who awarded the original contract.

(1988-0180, 1-12-88; 1998-1021, 10-6-98; 2002-685, 7-9-02; 2011-696, 11-8-11)

21.74. - Construction Contracting; Two-Step Method.

The Purchasing Division may obtain construction services by means of the Two-Step Contracting Method as defined in Subsection 21.8.b of this Code. All construction contractors shortlisted by a duly appointed Selection Committee will be considered responsible to perform the construction service, and the lowest responsive bidder in Step Two will receive the award.

(2004-732, 8-24-04; 2011-086, 3-8-11)

21.75, 21.76. - Reserved.

21.77. - Design/Build Contracts.

a. The design criteria package must be prepared and sealed by a design criteria professional, as defined in Section 287.055, Florida Statutes. This design professional may be a County employee or may be selected utilizing the procedures outlined in the CCNA and Broward County Procurement Code.

b. The design/build solicitation process, in accordance with Section 287.055, Florida Statutes, as amended, utilizes the Two-Step Contracting Method. In Step One, a Request for Letters of Interest

(RLI) is issued and invites all design/build firms, as defined by Section 287.055, Florida Statutes, as amended, to submit their qualifications at a time and date certain to the Purchasing Division. The Purchasing Division will provide all submittals to the Selection/Evaluation Committee (SC/EC). The SC/EC will shortlist at least three (3) firms, if possible, based on qualifications, availability, and past work of the firms, including the partners or members thereof. The shortlisted firms will then be presented with a RFP in Step Two. The RFP will contain a design criteria package as defined by Subsection 21.8.b, of this Code, and all other pertinent requirements for the project, including any small business enterprise participation goals, insurance, bonding requirements, and method of evaluation for award which shall state the factors, e.g., price, design, delivery time, and other project specific requirements. Each of the factors of evaluation shall be assigned a percent (weight), based on importance, totaling 100 percent. Proposals (responses to the RFP) shall be delivered in a sealed envelope to the Purchasing Division no later than the specified date and time certain. The Purchasing Division will forward all proposals, along with its recommendations on responsiveness, to the SC/EC for determination and evaluation. The Purchasing Negotiator will negotiate final details with the first ranked firm and, in conjunction with the Office of the County Attorney, draft a contract to recommend execution to the awarding authority.

c. If an emergency situation is declared by the Board of County Commissioners, a negotiating committee may be formed by the County Administrator and authorized to negotiate with the best qualified design/build firm for the design and construction of a capital project.

d. Selection/Evaluation Committees shall be subject to the provisions of Section 21.83, 21.84 and 21.94 of this Procurement Code, to the extent not inconsistent herewith.

(1998-1021, 10-6-98; 1990-0193, 1-16-90; 2001-1071, 10-23-01; 2002-685, 7-9-02; 2004-732, 8-24-04; 2006-401, 6-13-06; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.78—21.81. - Reserved.

PART VI. - PROCUREMENT OF SERVICES

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21.82. - Policy.

a. It is the policy of this County to publicly announce through the Purchasing Division all requirements for professional services and other selected goods or services, and to award contracts on the basis of demonstrated capability and qualifications at a fair and reasonable price with the ultimate selection based on the best interest of the County and maximum value received.

b. It is the policy of this County to allow vendors to cure non-compliant technicalities and minor irregularities in their offers, responses, and submittals when such non-compliance is not material. The purpose is to avoid eliminating vendors from the procurement activity due to inconsequential failures, errors, or omissions. Therefore, the using agency, or other County staff, shall undertake efforts to obtain omitted or missing information, materials, or documents and to obtain clarification of matters that are unclear. Any such information, materials, documents, and clarifications obtained shall be provided to the Selection Committee. Failure by the County to comply with the policy set forth in this subsection shall not be a basis for challenge or protest.

(1995-0154, 2-7-95; 2006-401, 6-13-06)

21.83. - Selection Committee.

a. Each Selection Committee shall be recommended by the Director of Purchasing and appointed by the County Administrator or designee. The appointment of the Selection Committee shall occur within one (1) business day after the approval of the applicable competitive solicitation. The dates of the shortlisting and ranking meetings shall be established with the appointment of the Committee. After the shortlisting and presentation meeting dates and times are set by the County Administrator, the dates and times shall not be changed unless due to a protest of the solicitation or the Director of Purchasing determines that the dates should be changed either to comply with other requirements of the Procurement Code or if it is in the best interest of the County. The using division shall provide staff to assist the Committee and the Purchasing Negotiator. The using division shall also provide to the Committee, the Office of the County Attorney, the County Auditor's Office, and, when applicable, the Cultural Division Representative, a copy of the RLI or other solicitation document and a brief, written summary of the project and the project objectives prior to the shortlisting meeting.

b. The best interest of the County in procuring services is served by an expeditious and competitive selection, negotiation, and contracting process. Each Selection Committee constituted under the provisions of this Code or any similar state law may proceed to conduct its scheduled and otherwise necessary business as soon as a quorum is present at such meeting.

c. It is the responsibility of the Committee chair to maintain order at meetings of the Selection Committee. Any person who interrupts or otherwise disrupts the Committee's deliberations or a vendor's presentation to the Committee may be removed from the meeting after warning by the chair.

d. When a Selection Committee has been established, the Selection Committee shall determine whether a vendor is responsive. The Director of Purchasing, however, shall first review vendor submittals for responsiveness and indicate his or her recommendations to the Selection Committee. Failure of the Director of Purchasing to make a recommendation shall not preclude the Selection Committee from determining the responsiveness of any vendor's offer. The Director of Purchasing's recommendation may include any other recommendation he or she deems appropriate. If an appeal from the Selection Committee's determination is filed, the Director of Purchasing shall not be required to decide the appeal pursuant to the provisions of Section 21.118. Instead, any vendor that has a substantial interest in and is dissatisfied or aggrieved in connection with the Selection Committee's

determination of responsiveness may appeal the determination pursuant to Section 21.120 of this Code.

e. The Selection Committee shall consider price, when possible, in determining the ranking of vendors.

(1997-1209, 11-18-97; 1998-1021, 10-6-98; 2001-1071, 10-23-01; 2004-732, 8-24-04; 2005-290, 4-26-05; 2006-401, 6-13-06; 2009-034, 1-27-09; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.84. - Selection Committee and Selection/Evaluation Committee Composition.

A Selection Committee or Selection/Evaluation Committee shall be composed as follows:

a. For solicitations valued at under \$5,000,000.00 for the initial contract period, the Committee shall have no less than three (3) members. For solicitations valued at \$5,000,000.00 and over for the initial contract period, the Committee shall have no less than five (5) members. The Office of the County Attorney shall provide advisory legal assistance.

b. The voting members of a Committee may include:

1. A Broward County employee with a Job Classification Code of D, E, or Y, or as designated by the County Administrator.

2. Other voting members who may have a significant financial concern, interest in the project, or special expertise and shall be selected as follows:

(a) No more than two (2) voting members shall be from the same department.

(b) No manager shall serve on a Committee with any individual from the same department who is under his or her direct supervision, without written permission from the County Administrator.

(c) Except as provided in this subsection, no person from outside County government shall be a voting member of the Committee. Persons from the private sector may be appointed as voting members of Committees when contractual arrangements require the participation of the private sector. The County Administrator may appoint persons from the public sector who are experts in certain areas. Representatives of the Broward County Chapter of the Florida Engineering Society and the AIA Fort Lauderdale may be appointed as voting members of committees for projects in which the County's design guidelines, when available, are to be used.

(d) The Committee Chair shall provide recording support to all Committee meetings including making a recording and promptly providing a written summary of the minutes of the proceedings. The written minutes, at a minimum, shall set forth the names of Committee members present and official actions taken by the Committee.

c. A representative of the Cultural Division shall serve as staff to the Committee for all architectural or engineering services involving the construction or renovation of public buildings.

d. All Committee members shall be free of conflicts of interest as provided by Part III, Chapter 112, Florida Statutes, as amended, and the Broward County Employee Code of Ethics, as amended. The appointing authority shall not appoint a person to a Committee whose service

would create the appearance of a conflict of interest.

e. A majority of the members of the Committee shall constitute a quorum, except in no event shall a quorum be less than three (3) members. Once a quorum is established, a Committee meeting may start without regard to the absence of any other Committee members. Except as provided in this paragraph, any member of the Committee may attend the meeting by audio interactive telephone conference, including voting; however, no one attending the meeting by audio interactive telephone conference may be counted as establishing a quorum. Each voting member of a Committee must be physically present and remain physically present at the RLI presentation/ranking meeting, the RFP evaluation meeting, and any combination meeting that includes a ranking or evaluation, unless a recess is called. Any member of a Committee that is absent from the RLI presentation/ranking meeting, the RFP evaluation meeting, or any combination meeting that includes a ranking or evaluation for more than five (5) minutes is automatically removed from the Committee and is not allowed to vote. The five-minute requirement begins when the Committee Chair announces the time and starts the meeting. The five-minute requirement ends when the meeting is adjourned. Automatic removal shall not affect the quorum for the particular meeting at which removal occurred if a quorum was present at the start of the meeting. The Chair of the Committee is responsible for notifying a removed member of his or her status.

f. Objection and/or New Information Period. If a vendor believes the Proposed Recommendation of Ranking is unfair, incorrect, or there is significant new information that should be taken into consideration, the vendor shall provide the objection or information in writing to the Purchasing Director within three (3) business days from the posting of the Proposed Recommendation of Ranking. The letter must (1) identify the vendor submitting the objection or new information and the solicitation involved; (2) include a clear statement of the new information or, in the case of an objection, the legal and factual grounds on which the objection is based; and (3) state the relief requested. The letter must include any and all supporting documents along with a statement attesting that all statements made in support of the submission are accurate, true, and correct. The vendor shall acknowledge that the determination of inaccurate untruthful, or incorrect statements made in support of this submission may serve as a basis for debarment of the vendor regardless of whether the submission is directly provided by the vendor or a representative on behalf of the vendor. The letter, including any response thereto, shall be attached to the Board agenda item for the approval of the Selection Committee's ranking under the applicable competitive solicitation.

g. A Committee need not meet after ranking/evaluating the vendors unless there is new significant information or a significant change in the staff, subcontractors, or qualifications of the first-ranked/highest-evaluated vendor. When the Purchasing Director identifies such information or change, the Purchasing Director or designee will present such information to the Committee for consideration in order to ratify the ranking/evaluation or to reorder the list. If the list is reordered, all negotiations with the original first-ranked/highest-evaluated vendor will immediately cease, and negotiations will begin with the first-ranked/highest-evaluated vendor on the reordered list.

h. After the Final Recommendation of Ranking is posted, the Purchasing Director shall present to the Board the ranking/evaluation for approval. The Board, by majority vote, has the option to either (1) approve the Selection/Evaluation Committee's ranking/evaluation recommendation; (2) recommend to the Purchasing Director rejection of all submittals based upon a stated reason; or (3) send the ranking/evaluation back to the Selection/Evaluation Committee to consider new significant information and either ratify the ranking/evaluation or reorder the list. The Board, by

super majority vote, has the option to re-rank/re-evaluate the shortlisted firms following presentations to the Board.

i. If the Board of County Commissioners approves the final ranking, the Purchasing Negotiator, assisted by County staff, will attempt to negotiate a contract with the first-ranked/highest-evaluated vendor within a reasonable time period as defined in the solicitation document. The Purchasing Negotiator shall keep the using division apprised of the negotiations and shall meet with the using division's representative, as necessary, to ensure input relevant to the using division's needs and concerns. The final negotiated contract will be forwarded by the Purchasing Negotiator to the awarding authority for approval.

j. All members of each Committee and all persons who formally participate or assist in negotiations must receive prior training from the Purchasing Division in the purpose and process of negotiations pursuant to the Procurement Code. Such training must be available in written or recorded form as well as through classroom and other structured oral instruction, such as seminars or lecture presentation.

(1994-0052, 1-25-94; 1995-0154, 2-7-95; 1998-0488, 5-12-98; 1998-1021, 10-6-98; 1999-0215, 3-2-99; 2001-1071, 10-23-01; 2002-685, 7-9-02; 2003-444, 6-10-03; 2004-732, 8-24-04; 2005-290, 4-26-05; 2009-316, 4-28-09; 2011-086, 3-8-11)

21.85. - Procurement of Architectural, Engineering, Testing, Landscape Architectural, and Land Surveying Services.

a. *File of qualifications for CCNA Firms.* In the procurement of professional services covered by CCNA, the Director of Purchasing shall encourage firms engaged in the lawful practice of their professions to submit at least annually a statement of qualifications, performance data and pricing structure. This information shall be held in the Purchasing Division and shall become part of the basis for selection of professional firms to serve the County. This list of qualifications shall contain the types of services provided by each firm, the staff available, their areas of specific expertise, and Federal Form 254.

b. *Determination of a Project Covered by CCNA.*

1. A Project under this section shall be a grouping of minor construction, rehabilitation, or renovation activities or a grouping of substantially similar construction, rehabilitation or renovation activities.

2. The determination as to whether a group of activities may be deemed a project under this section shall be made by the Contract Administrator and the Director of the Purchasing Division or his-her designee.

c. *Solicitation of Professional Services Covered by the Consultants Competitive Negotiation Act ("CCNA").*

1. *Solicitations.* Each time a requirement or group of requirements is to be procured under the Consultants' Competitive Negotiation Act (CCNA), either a Request for Proposals or a Request for Letters of Interest will be sent to all firms having filed qualifications with the Director of Purchasing.

2. *Advertisement for CCNA.* The Purchasing Division shall publicly announce each project. Each public announcement shall be consistent with Section 287.055, Florida Statutes, as

amended.

3. *Review of Qualifications.* A duly appointed Selection/Evaluation Committee shall review all qualifications and submittals of those firms responding to the solicitation.

4. *Shortlist.* The Selection/Evaluation Committee shall reduce the number of firms (shortlist) to at least three (3), if possible, for further discussions. In shortlisting firms, the Committee shall attempt to select the best qualified firms for the particular project by using a method established by the Director of Purchasing prior to the issuance of the solicitation.

5. *Discussions.* If a Request for Letters of Interest is used, the Committee shall hold discussions with all shortlisted firms. Such discussion may encompass formal presentations by each firm. The requirements of presentations or discussion will be the same for each firm shortlisted. If a Request for Proposals is used, the Committee shall evaluate each proposal based upon weighted criteria and may require presentations or discussions.

6. *Ranking/Rating of Firms.* If a Request for Letters of Interest is used, the voting members of the Selection Committee, after discussions and/or presentations by each shortlisted firm, will vote on a ranking. If a Request for Proposals is used, the Evaluation Committee will score each proposal to determine a ranking. The ranking of firms shall indicate the Committee's view of the firm that will best serve the interest of the County with factors considered such as the ability of professional personnel; whether a firm is a County certified small business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and a projected workload of the firm; and the volume of work previously awarded to each firm by the County.

7. *Ranking/Rating Reported to the Board.* After the Final Recommendation of Ranking is posted, the Purchasing Director shall present the ranking to the Board in accordance with Subsection 21.84.h.

8. *Negotiations.* The Purchasing Negotiator shall negotiate with the first-ranked firm to perform services upon terms and conditions, and at a compensation which the Purchasing Negotiator determines to be fair and reasonable. If the Purchasing Negotiator is unable to negotiate a satisfactory contract with the first-ranked firm, negotiations with that firm shall be formally terminated in a writing sent to the firm. The Purchasing Negotiator then shall undertake negotiations with the second-ranked firm. If these negotiations also prove unsatisfactory, negotiations shall again be terminated and the Purchasing Negotiator will negotiate, in turn, with each firm in accordance with its ranking, until an agreement is reached or the shortlist is exhausted. When a shortlist is exhausted, a new solicitation must be initiated.

9. *Award of Contract.* At the successful conclusion of negotiations, a contract, written or approved by the Office of the County Attorney, will be awarded and signed by the awarding authority.

d. *Emergencies Under CCNA.* The Board of County Commissioners is empowered by State Statute to declare the purchase of professional consulting services under CCNA to be an emergency. After such declaration the Board may direct that any part or all of the procedure mandated in this Code and by CCNA be eliminated in accordance with the necessity of the situation.

e. *Determination of Capital Project Amount.* Each using agency shall make a good faith cost estimate of each capital project. When the estimate is within ten percent of the amount covered by

CCNA, the using agency shall select a consultant pursuant to the CCNA procedures outlined by this Code.

f. *Continuing Contracts Covered by CCNA.*

1. A continuing contract as defined under the Consultants' Competitive Negotiation Act ("CCNA") can be used for: (1) projects in which construction costs do not exceed \$2,000,000.00, (2) study activities when the fee for such professional service does not exceed \$200,000.00, or (3) work of a specified nature as outlined in the contract required by the agency, with no time limitation except that the contract must provide a termination clause.

2. The continuing contract shall act as a general professional services contract within the stated subject matter and will have a general description of services but will not have a defined scope of work. The work shall be assigned through the issuance of work authorizations. Each work authorization shall specifically define the scope of work and fees for the particular professional service.

3. The total annual cumulative fees for a continuing contract shall not exceed \$1,000,000.00 for construction-related projects, \$500,000.00 for a study activity, and \$500,000.00 for "work of a specified nature."

4. For "work of a specified nature," the description of services shall (1) not be project specific, (2) be limited to the specific Using Agency (resulting in a contract that shall not be shared with other Using Agencies), and (3) include subject matters that do not require a professional seal. The only areas requiring a professional seal that are permitted in a continuing contract for work of a specified nature are serving as the County's Design Criteria Professional in the preparation of design criteria packages, and serving as a Threshold or Special Inspector.

(1988-0180, 1-12-88; 1990-1226, 4-24-90; 1993-0708, 10-1-93; 1997-1209, 11-18-97; 1998-1021, 10-6-98; 2001-1071, 10-23-01; 2002-685, 7-9-02; 2004-732, 8-24-04; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.86. - Professional Services Above Mandatory Bid Amount.

a. Professional services and other selected goods or services above Mandatory Bid Amount not listed by CCNA or which are listed and are below the CCNA dollar limits, or for which a procurement method is not specified by Florida State Statutes, shall be procured under the same procedures as services covered by CCNA or alternates set forth in this Code and Administrative Regulations with the exception that a representative of the Office of the County Attorney may be excused from some negotiation meetings. The Director of Purchasing may select alternate methods of acquisition as necessary, including the Two-Step Contracting Method or other types of solicitations for non-CCNA purchases or services whereby a separate price envelope is requested with the submission and is only opened after shortlisting. The shortlisted firms will be ranked after their presentations, which may include discussion of their price proposals.

b. All general services above Mandatory Bid Amount whereby a price and other criteria may be quantitatively evaluated may be acquired by Invitations for Bid or Request for Proposals, or Letters of Interest, unless a different procurement method is prescribed by Florida State Statutes. The request for proposals shall indicate the evaluation criteria and how the evaluation is to be made. The award of all general services shall be made by the appropriate awarding authority.

c. Award. All formal multi-party contracts above the award authority of the Director of Purchasing shall be awarded by the Board and signed by the Mayor, Vice-Mayor, or as otherwise provided by the Board.

(1995-0154, 2-7-95; 1998-1021, 10-6-98; 2004-732, 8-24-04; 2005-290, 4-26-05; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.87. - Letters of Interest.

a. Letters of Interest may be obtained by the Purchasing Division in one of the following methods:

1. Procurement Equal to or Exceeding Mandatory Bid Amount. Unless otherwise provided by general or local law, procurements estimated to be equal to or to exceed the mandatory bid amount may be procured by formally advertising Requests for Letters of Interest and the responses received as a formal bid.

2. Procurement Less Than Mandatory Bid Amount. Procurements estimated to be less than the mandatory bid amount may be procured by requests for letters of interest in writing, but without advertising.

b. Each Letter of Interest solicitation shall include standard questions to be answered by all vendors. A vendor's response to these questions shall be verified by the Selection Committee staff, if possible, and reported to the Selection Committee.

c. Each Letter of Interest solicitation shall include or refer to all standard contract terms and conditions. A vendor must indicate any exceptions or changes it desires to make to these terms and conditions in its written response. Such exceptions may be used by the Selection Committee in its deliberations.

d. Each Letter of Interest solicitation shall require a vendor to disclose in its response all previous instances of being found to have violated sec. 1-266, Broward County Code of Ordinances, relating to the Cone of Silence.

e. An RLI that receives less than three (3) responses by the submittal deadline shall have the deadline for receipt of responses extended by a maximum of up to four (4) weeks as determined by the Director of Purchasing to solicit additional responses. The Director of Purchasing shall determine the extension period and will notify all prospective vendors, including those which have responded. No response to said RLI will be opened prior to the close of the extension period. If after the extension period has expired there remain less than three (3) responses, the using division must compile all responses and submit them to the Selection Committee for determination of responsiveness. The Director of Purchasing shall provide recommendations as to the responsiveness of all responses as required by Subsection 21.83.d of this Code.

(1988-0180, 1-12-88; 1998-1021, 10-6-98; 2004-732, 8-24-04; 2005-290, 4-26-05; 2006-401, 6-13-06; 2007-312, 5-8-07; 2009-316, 4-28-09; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.88. - Purchases of Professional Service.

Subject to applicable legal requirements, the Director of the Purchasing Division is authorized to enter into multiple award, open-end, fixed, or any other legal contracts for professional services at or below the Director's award authority for professional services.

a. *Multiple Award Contracts.* If multiple award contracts are issued, the using Division Director may select the vendor most capable and advantageous to the County to perform the needed services and request the Purchasing Division to issue a purchase order covering the total amount of the contract.

b. *Single Award Contracts.* A single award contract for professional services below the mandatory bid amount may be obtained by:

1. The using Division Director or his or her designee reviewing all qualifications presently on file with the Purchasing Division or requesting solicitation by Purchasing of Letters of Interest.

2. A selection and negotiation or selection and evaluation committee appointed by the using Division Director selecting a minimum of three firms, if possible, which are qualified and willing to enter into a contract with the County.

3. The Committee shall rank the three firms, if possible, in order of preference and include the ranking in the contract file. The ranking may be made from the written qualifications or the using Division Director or Committee may request formal presentations. If presentations are required, at least three firms, if possible, must be given the opportunity to make a presentation.

4. The using Division Director or the Committee shall enter into negotiations for a formal contract with the highest ranked firm. If the Division Director or the Committee is unable to conclude a contract with the highest ranked firm, they shall formally terminate negotiations and proceed to the second highest ranked firm and so forth until the list is exhausted. The using Division Director shall then review again the qualifications of firms on file with the Purchasing Division or the Committee shall review the responses to the Letter of Interest solicited by the Purchasing Division to determine if suitable firms are available for consideration. If no other firms can reasonably be considered, Purchasing shall be requested to proceed to issue a Request for Letters of Interest.

c. *Award of Contract.* Upon review of the Committee's recommendation, the Director of Purchasing may issue a purchase order confirming a formal agreement written by the Office of the County Attorney and signed by the vendor. The Director of Purchasing or the County Administrator is hereby empowered to sign such contracts on behalf of the Board of County Commissioners.

(1988-0180, 1-12-88; 1993-0708, 10-1-93; 1994-0052, 1-25-94; 2001-1071, 10-23-01; 2002-685, 7-9-02; 2004-732, 8-24-04)

21.89. - Emergency.

The Director of Purchasing is authorized to procure non CCNA professional services in emergency situations under the same conditions and procedures as applied to other emergencies.

(1988-0180, 1-12-88)

21.90. - Sole Source Professional Services.

The awarding authority shall be empowered to enter into a contract with a particular provider of professional services not covered by CCNA or below CCNA limits if no other firm or individual may

reasonably perform said services for the County.

(1988-0180, 1-12-88)

21.91. - Testing Services.

Professional Testing Services covered under CCNA may be purchased by the establishment of a Rotating List for purchases above or below the Mandatory Bid Amount. The award must be made by the Board and the contracts signed by the Mayor, Vice Mayor, or individual specifically indicated by the Board.

(1988-0180, 1-12-88; 2001-1071, 10-23-01; 2007-729, 10-23-07; 2007-729, 10-23-07)

21.92. - Reimbursable Items.

The Purchasing Negotiator shall consider reimbursable items as necessary or desirable for each contract under consideration. If a contract is to contain reimbursable items, the contract shall have a limitation as to the types of reimbursables included and the monetary amount to be paid by the County. Consultants shall not be paid a markup for the payment of cost to sub-consultants where overhead has been applied as part of the contract. Specific guidelines and requirements for reimbursables shall be promulgated by the County Administrator.

(1994-0052, 1-25-94; 2004-732, 8-24-04)

21.93. - Formality of Receipts of Letters of Interest and Requests for Proposals.

All formally solicited Requests for Proposals or Requests for Letters of Interest must be timely received to be considered. Any submission received after the date and hour of closing for receipts shall be rejected and returned to the submitter unopened, if possible, marked late receipt. A solicitation may be cancelled or rejected as authorized in Section 21.30.f.3 of this Code.

(1993-0708, 10-1-93; 2004-732, 8-24-04)

21.94. - Changes to Negotiated Contracts.

a. Any changes, including, without limitation, any amendments to a contract negotiated under the provisions of this Code (which are not specifically allowed in the contract) shall be in the form of a formal amendment approved by the appropriate awarding authority, based on the total amount of the amendment, regardless of the authority who awarded the original contract, as indicated in Section 21.31. The amendment shall be prepared and executed with equal dignity and formality as the original contract.

b. In any case where an amendment is \$50,000.00 or more, the amendment must be approved by the proper award authority, and the approval shall be based upon negotiations conducted in accordance with Florida's Sunshine Law by the Purchasing Negotiator or Contract Administrator.

c. In any case where the amendment is less than \$50,000.00, negotiations may be conducted by the Contract Administrator or designee; however, the amendment must be approved by the proper award authority.

d. In cases of architectural and engineering non-continuing services contracts for capital construction projects, amendments may be negotiated by the Contract Administrator when the amount is less than

\$60,000.00. The Contract Administrator may negotiate amendments more than \$30,000.00 but less than \$60,000.00 only two (2) times in the life of any architectural and engineering services contract for capital construction. In any case, the amendments must be approved by the proper award authority and the approval shall be based upon negotiations conducted in accordance with Florida's Sunshine Law by the Purchasing Negotiator or Contract Administrator.

e. The Contract Administrator may negotiate amendments to the scope of services and time of performance, as long as the monetary limits of Section 21.94, and other provisions of this Code, are adhered to.

f. All nonemergency work authorizations issued pursuant to a contract in the Library of Environmental Consulting Services must be limited to a cumulative total of \$200,000.00 for all such work authorizations under a particular contract in the Library. If the Contract Administrator determines that this limit must be exceeded for operational purposes, the Contract Administrator must bring the work authorization to the Purchasing Negotiator for negotiation. The Contract Administrator will present the negotiated work authorization to the Board of County Commissioners for approval.

(1998-1021, 10-6-98; 1999-0215, 3-2-99; 1999-0596, 4-13-99; 2001-1071, 10-23-01; 2002-685, 7-9-02; 2004-732, 8-24-04; 2005-290, 4-26-05; 2011-086, 3-8-11)

21.95—21.99. - Reserved.

PART VII. - COST PRINCIPLES FOR CONTRACTS OF THE CENTRAL PROCUREMENT SYSTEM

[21.100. - Applicability.](#)

[21.101. - Allowable Costs.](#)

[21.102. - Cost Not Allowable.](#)

[21.103. - Cost Data Certification and Supporting Documentation.](#)

[21.104. - County's Right to Audit Books and Records.](#)

[21.105. - Compliance with State and Federal Requirements.](#)

[21.106—21.111. - Reserved.](#)

21.100. - Applicability.

a. Except as otherwise provided for herein or in explicit provisions of particular contracts of concern, the principles herein shall govern the allowability of costs incurred by the contractor in all contracts of the Central Procurement System which explicitly provide for payment based on incurred costs such as cost-plus and cost-reimbursable contracts and contracts of other types which provide for cost reimbursement for selected portions of the contract.

b. To the degree practicable, these principles shall also govern the determination of the allowability of estimated costs in the settlement of canceled or terminated contracts of the Central Procurement System.

c. These principles are not applicable to costs for which fixed unit or lump sum prices are explicitly

stated in contracts or for which prices are fixed by law or regulation.

(1988-0180, 1-12-88)

21.101. - Allowable Costs.

a. The total costs allowable for reimbursement on a contract at any given time are the sum of the allowable direct costs actually incurred in the performance of the contract in accordance with its terms; plus indirect costs, administrative overhead, and profit only to the degree and in the manner explicitly specified in the particular contract of concern; and less all applicable credits to the County.

b. Direct costs shall be allowable for reimbursement to the extent that they are reasonable, allocable, accounted for in accordance with generally accepted accounting principles, accounted for in a manner consistent with the contractor's usual accounting practices in charging costs to its other activities, not unlawful under any applicable statute and not precluded from allowability by any other provision herein or of the particular contract of concern. Travel expenses shall be reimbursed in accordance with the provisions set forth in Chapter 112, Florida Statutes. Interest due as a result of late payments by the County shall be paid in accordance with the Prompt Payment Ordinance.

1. *Reasonableness of Direct Cost.* A direct cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinary prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration shall be given to:

(a) Whether the cost is of the type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract.

(b) Whether the cost is one that a prudent business person would incur under the circumstances, considering the person's responsibilities to the owners of the business, employees, customers, the County, and the general public.

(c) The restraints inherent in and requirements imposed by such factors as generally accepted sound business practices; arm's length bargaining; federal, state, and local laws and regulations; and the contract terms and conditions.

(d) Significant deviations from the contractor's established practices which may unjustifiably increase the contract costs.

(e) Any other relevant circumstances.

2. *Allocability of Direct Costs.* A direct cost is allocable if it is incurred in the course of performance of the contract in accordance with its terms; is assignable or creditable in accordance with the relative benefits received to one or more cost objectives or other work units used solely to accumulate and measure direct costs for the particular contract; and is not otherwise charged to the contract.

3. *Direct Material Costs.* Direct material costs (costs of all supplies, including raw materials, parts, and components, whether acquired by outside purchase, or acquired by transfer from within the firm(s) under the control of the contractor) which are acquired in order to perform the contract are allowable, subject to the following:

(a) Material costs shall include adjustments for all available discounts, refunds, rebates,

and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive for salvage and material returned to a supplier.

(b) Allowances for all material transferred from within the firm(s) under the control of the contractor shall be on the basis of costs incurred by the transferor except when:

(1) The contractor's established practice is to price such material at the transferor's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions; and

(2) The price is established by either an established catalog price or by the lowest price offer obtained as a result of competitive sealed bidding or competitive negotiations conducted with other businesses which normally produce the items in similar quantities.

(1988-0180, 1-12-88; 1990-1226, 4-24-90; 2001-1071, 10-23-01)

21.102. - Cost Not Allowable.

The following costs are not allowable unless explicitly provided for in the particular contract of concern:

- a. Indirect costs.
- b. Overhead costs.
- c. All mileage for ground transportation in excess of the rate prescribed by the Board of County Commissioners for reimbursement of its own employees.
- d. All advertisement costs except those solely for recruitment of personnel, the procurement of scarce items, and the disposal of scrap and surplus materials.
- e. All bad debts including losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs.
- f. Unsupported general contingency costs.
- g. Entertainment costs to include amusements, social activities, and incidental activities relating thereto, such as meals, beverages, lodging, transportation, and gratuities.
- h. All interest, fines, and penalties paid on delinquent taxes.
- i. All other fines and penalties except those incurred as a direct result of compliance with a specific provision of the contract.
- j. All gifts, contributions, and donations.
- k. Losses incurred under other contracts.
- l. All federal income taxes and federal excess profit taxes.
- m. All taxes from which the contractor could have obtained an exemption, but failed to do so (except where the administrative costs of obtaining the exemption would have exceeded the tax savings realized).

- n. Litigation costs (filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board), except when incurred to protect the interest of the County and approved in advance by the County.
- o. Pre-contract costs incurred prior to the effective date of the contract directly pursuant to and in anticipation of the award of the contract.
- p. Costs incurred in preparing, submitting, and supporting bids and proposals.
- q. Actual losses which could have been covered by permissible insurance or were expressly covered by self-insurance.

(1990-1226, 4-24-90)

21.103. - Cost Data Certification and Supporting Documentation.

Cost data provided in any cost proposals must be certified by the contractor to be accurate, complete, and current to the best of the contractor's knowledge and belief. Invoices for incurred costs must be documented by paid receipts, copies of checks, or other evidence that the costs were actually incurred.

(1988-0180, 1-12-88; 2001-1071, 10-23-01)

21.104. - County's Right to Audit Books and Records.

The County has the right to audit the books and records of any contractor under any contract, except when they are totally based on a firm, fixed price. Such books and records must be maintained by the contractor for a period of three years from the date of final payment under the prime contract.

(1988-0180, 1-12-88)

21.105. - Compliance with State and Federal Requirements.

In contracts which are financed in whole or in part by Federal or state grant funds, all requirements set forth in the grant documents or in the law, rules, and regulations governing the grant, including federal or state cost principles, shall be satisfied. To the extent that they differ from those of the County, the cost principles of the grantor shall be used.

(1988-0180, 1-12-88)

21.106—21.111. - Reserved.

PART VIII. - SUPPLY MANAGEMENT

[21.112. - Relocation of Excess Supplies Within the County.](#)

[21.113. - Disposal of Surplus Personal Property.](#)

[21.114—21.117. - Reserved.](#)

21.112. - Relocation of Excess Supplies Within the County.

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

(1988-0180, 1-12-88; 2011-696, 11-8-11)

21.113. - Disposal of Surplus Personal Property.

a. All personal property which has been declared surplus by the Board of County Commissioners or its designee, the Director of Purchasing, shall be disposed of in the manner provided by sections 274.05 and 274.06, Florida Statutes. The Director of Purchasing may sell or dispose of surplus personal property in conformance with Florida Statutes and the requirements of this Code.

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

1. Except as provided in subsection 5, the donation or direct sale, for fair market value without bid or auction, of all surplus personal property to a § 501 (c)(3) nonprofit civic, charitable, educational, scientific, or cultural association or entity which primarily serves the public health and welfare shall be subject to the express approval of the Board of County Commissioners.

2. Except as provided in Subsection 21.113.b.5, the direct sale without bid of surplus personal property, regardless of fair market value, or donation to the State of Florida, or any governmental unit, or any political subdivision as defined in Section 1.01, Florida Statutes, as amended, shall be subject to the express approval of the Board of County Commissioners.

3. The disposal of surplus personal property to the public and private business entities, for value, shall be by auction, quote, or sealed bid. The County reserves the right to award bids for surplus property to local governmental entities located within Broward County, even when the bids are not the highest obtained, provided the bid is judged to be fair and reasonable by the Director of Purchasing.

4. Surplus personal property without commercial or market value may be disposed of in a manner approved by the Director of Purchasing and in conformity with applicable laws.

5. Surplus personal property with a current value of less than \$5,000.00 may be sold directly, without bid or auction, for fair market value, or donated upon the approval of the Director of Purchasing or designee, to a § 501(c)(3) nonprofit, civic, charitable, educational, scientific, cultural association or entity which primarily serves the public health and welfare, school or governmental agency. The Director of Purchasing may not, in any fiscal year, donate or directly sell surplus property with a cumulative fair market value of \$5,000.00 or more to any one association or entity without the Board of County Commissioner's approval. The Director of Purchasing shall report donations and sales made under this subsection from time to time to the County Administrator and County Auditor.

6. Articles of clothing which become property of the County in accordance with applicable law shall be sold by public sale or donated to a § 501(c)(3) nonprofit organization. Donations of clothing done under this section may be made on an ongoing basis.

7. All donation requests or requests from a § 501(c)(3) nonprofit organization which primarily

serves the public health and welfare or a governmental unit for a direct nonauction, nonbid sale must be on official letterhead stationery of the requesting nonprofit organization or governmental unit, as applicable, and be addressed to the Director of Purchasing. The donation request must include an explanation how the surplus personal property will be used for the promotion of the health, welfare and public interest of the community. The letter of request must include a declaration that donee agrees not to resell or otherwise dispose of donated surplus personal property or permanently relocate the surplus personal property outside of Broward County, excluding articles of clothing, for one (1) year from the date of receipt.

8. No employee directly participating in the disposing, processing, or pricing of surplus property shall be entitled to purchase any such property.

c. In addition to Florida law and this Code, the following provisions apply to the sale or disposal of surplus County vehicles:

1. Only vehicles valued at less than \$5,000.00 may be donated. Donees must be government entities located within Broward County, as approved by the Director of Purchasing.

2. Vehicles valued at more than \$5,000.00 must be sold at auction or through a competitive bid. The County reserves the right to award bids for surplus vehicles to local government entities located within Broward County, even when the bids are not the highest obtained, provided the bid is judged to be fair and reasonable by the Director of Purchasing.

3. Vehicles valued at less than \$5,000.00 may be sold by auction, sealed bid, quote, or on the County's Internet Surplus Store.

4. A request from a nonprofit organization for a vehicle donation will be processed in accordance with the Broward County Administrative Code, Chapter 19.12 (Motor Vehicles to Nonprofits). All nonprofit organizations seeking grants-in-aid from Broward County must submit a Letter of Interest in response to a public notice by the County pursuant to Section 19.10 of the Broward County Administrative Code.

(1998-0004, 1-6-98; 1998-1021, 10-6-98; 2002-685, 7-9-02; 2004-732, 8-24-04; 2011-696, 11-8-11)

21.114—21.117. - Reserved.

Editor's note— Res. No. 2004-491, § 9, adopted May 25, 2004, repealed former sections 21.114, 21.115 in their entirety. Former section 21.114 pertained to the purchase of fire and medical supplies and derived from Res. Nos. 1996-0902, 10-1-96; 2002-917, 10-15-02. Former section 21.115 pertained to purchase of fire apparatus maintenance and emergency vehicle maintenance and derived from Res. Nos. 2002-960, 11-4-02. Section 29 of Res. No. 2004-732, adopted Aug. 24, 2004, also repealed former section 21.114.

PART IX. - PRE-LITIGATION RESOLUTION OF CONTROVERSIES

- [21.118. - Authority To Resolve Protested Solicitations and Proposed Awards.](#)
- [21.119. - Authority To Debar or Suspend.](#)
- [21.120. - Hearing Procedure for Debarment of Persons and Determinations of the Director of Purchasing.](#)
- [21.121. - Reinstatement.](#)
- [21.122. - Termination of Contract; Rescission of Award.](#)
- [21.123—21.125. - Reserved.](#)

21.118. - Authority To Resolve Protested Solicitations and Proposed Awards.

a. *Right to Protest.* Any actual or prospective bidder or offeror who has a substantial interest in and is aggrieved in connection with the solicitation or proposed award of a contract which is in excess of the award authority of the Director of Purchasing may protest to the Director of Purchasing. Protests arising from the decisions and votes of Selection and Evaluation Committees shall be limited to protests based upon alleged deviation(s) from established Committee procedures set forth in this Code and existing Broward County written Guidelines. Any allegations of misconduct or misrepresentation on the part of a competing vendor will not be considered a protest, but will be reviewed and, if appropriate, in the County's sole discretion, used for purposes of evaluating the responsibility or qualifications of the vendor(s).

1. Any protest concerning the bid or other solicitation specifications or requirements must be made and received by the County within seven (7) business days from the posting of the solicitation or addendum on the Purchasing Division's website. Such protest must be made in writing to the Director of Purchasing. Failure to timely protest bid specifications or requirements is a waiver of the ability to protest the specifications or requirements.
2. Any protest concerning a solicitation or proposed award above the award authority of the Director of Purchasing, after the bid opening, shall be submitted in writing and received by the County within five (5) business days from the posting of the final recommendation of award on the Purchasing Division's website.
3. Any actual or prospective bidder or offeror who has a substantial interest in and is aggrieved in connection with the proposed award of a contract which does not exceed the amount of the award authority of the Director of Purchasing, may protest to the Director of Purchasing. The protest shall be submitted in writing and received within three (3) business days from the posting of the final recommendation of award on the Purchasing Division's website.
4. Any actual or prospective bidder or offeror who has a substantial interest in and is aggrieved in connection with the proposed award of a purchase order based on verbal quotation may protest to the Director of Purchasing any time during the procurement process, up to the time of the award of the purchase order, but not after such time.
5. For purposes of this section, a business day is defined as Monday through Friday between 8:30 a.m. and 5:00 p.m.
6. As a condition of initiating any bid protest, the protestor shall present the Director of Purchasing with a nonrefundable filing fee for the purpose of defraying the costs in administering the protest payable in accordance with the schedule provided below:

Estimated Contract Amount	Filing Fee
\$30,000—\$250,000	\$ 500

\$250,001—\$500,000	\$1,000
\$500,001—\$5 million	\$3,000
Over \$5 million	\$5,000

The estimated contract amount shall be based upon the contract bid amount submitted by the protestor. If no contract bid amount was submitted, the estimated contract amount shall be the County's estimated contract price for the project. The County may accept cash, money order, certified check, or cashier's check, payable to Broward County Board of County Commissioners.

7. The filing of a protest under this section shall not stop the solicitation, negotiation, or contract award process, unless it is determined by the Director of Purchasing, in consultation with the Office of the County Attorney, that it is in the best interest of the County.

b. *Authority to Resolve Protests.* The Director of Purchasing shall have the authority to settle and resolve a protest of an aggrieved offeror, actual or prospective, concerning the solicitation or award of a contract.

c. *Decision.* If the protest is not resolved by mutual agreement, the Director of Purchasing shall promptly issue a decision in writing, after consulting with the County Attorney's Office. The decision shall:

1. State the reasons for the action taken.
2. Inform the protestant of his or her right to Administrative review and of the appeal bond requirements, and provide the form of bond, if required.

d. *Distribution.* A copy of this decision shall be either mailed, sent by facsimile, or otherwise furnished as agreed upon by the parties, immediately to the protestant and any other party intervening.

e. All protests under this section made by the aggrieved offeror, or its duly authorized agent or attorney, shall be made by an offeror who has standing to maintain a protest under Florida case law, shall be in writing, be timely made under this Code, and briefly state the facts and arguments upon which the protest is made. Such notices, to be deemed timely, must be received by the County Purchasing Division to the attention of the Director of Purchasing within the time stated. The institution and filing of a protest under this Code is an administrative remedy that should be employed prior to the institution and filing of any civil action against the County concerning the subject matter of the protest.

f. Protests not timely made under this section shall be barred and shall not be heard by the Director of Purchasing or the Hearing Officer. Any basis or ground for a protest not set forth in the letter of protest required under this section shall be deemed waived.

(1994-0052, 1-25-94; 1998-1021, 10-6-98; 2001-1071, 10-23-01; 2002-685, 7-9-02; 2009-316, 4-28-09; 2010-106, 3-9-10; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.119. - Authority To Debar or Suspend.

a. *Authority.* After reasonable notice to the person or company involved and reasonable opportunity

for that person or company to be heard, the Director of Purchasing, after consultation with the Office of the County Attorney, shall have authority to debar or suspend a person or company, whether a prime contractor/consultant or subcontractor/subconsultant, for cause from consideration for award of future contracts. The debarment shall be for a period commensurate with the seriousness of the cause(s), and shall continue for the entire time set by the Director of Purchasing. Where the offense is willful or egregious, an indefinite term of debarment may be imposed. The Director of Purchasing shall also have the authority to suspend a person or company from consideration for award of contracts if there is probable cause for debarment. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. The Director of Purchasing may suspend the person or company for a period of not more than three (3) months. During the period of debarment or suspension, the person or company and its affiliates, or other companies with any of the officers or principals the same as the suspended company, may not bid on any County contracts, regardless of dollar amount, nor be approved as a subcontractor on any County contract. A decision to suspend by the Director of Purchasing shall be considered a conclusive and final act with no right of appeal.

b. *Cause for Debarment.* The causes for debarment include the following:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor.
3. Conviction under state or Federal antitrust statutes arising out of the submission of bids or proposals.
4. Violation of contract provisions, as set forth below, of a character which is regarded by the Director of Purchasing to be so serious as to justify debarment action:
 - (a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
5. Refutation of an offer by failure to provide bonds, insurance or other required certificates within a reasonable time period.
6. Refusal to accept a purchase order, agreement, or contract, or to perform thereon provided such order was issued timely and in conformance with the offer received.
7. Presence of principals or corporate officers in the business of concern, who were principals within another business at the time when the other business was suspended or debarred within the last three years under the provisions of this section.
8. Violation of the ethical standards set forth in state law.

9. Violation of the Cone of Silence, Section 1-266, Broward County Code.

10. Any other cause the Director of Purchasing determines to be so serious and compelling as to affect responsibility as a county contractor including debarment by another governmental entity for any cause listed in this Code.

c. *Decision.* The Director of Purchasing shall issue a written decision to debar or suspend. The decision shall:

1. State the reason for the action taken, and
2. Inform the debarred person of its rights to Administrative Review.

d. *Notice of Decision.* A copy of the decision for the debarment or suspension shall be mailed or otherwise furnished immediately to the debarred person and any other party intervening.

(1988-0180, 1-12-88; 1990-2809, 9-11-90; 1994-0052, 1-25-94; 1998-1021, 10-6-98; 2002-685, 7-9-02; 2009-316, 4-28-09)

21.120. - Hearing Procedure for Debarment of Persons and Determinations of the Director of Purchasing.

a. *Right of Appeal.*

1. Any person having a substantial interest in the matter, who is dissatisfied or aggrieved with the notification of the Director of Purchasing's determination regarding the resolution of a protested solicitation or proposed award or a determination to debar or refusal to reinstate, must, within ten (10) calendar days of such notification, appeal said determination to the County in accordance with the hearing procedures contained in Subsection 21.118 of this Code. All requirements and restrictions of Subsection 21.118 apply to appeals filed pursuant to this Subsection 21.120.a.1.

2. Any person who has a substantial interest in the matter and who is dissatisfied or aggrieved with the determination of responsiveness by the Selection Committee pursuant to Subsection 21.83.d of this Code must appeal said determination to the County by sending written notice to the attention of the Director of Purchasing to the County Purchasing Division. Such appeal must be received by the County Purchasing Division within ten (10) calendar days of the determination by the Selection Committee to be deemed timely. The requirements of Subsections 21.118.e and 21.118.f shall be applicable to the appeal of the Selection Committee's determination of responsiveness. Only appeals that are in writing and timely made by or on behalf of a person who has standing to maintain a protest under Florida case law, and accompanied by an appeal bond as required by Subsection 21.120.a.3, shall be entitled to a decision by a hearing officer. The written appeal shall briefly state the facts and arguments upon which the appeal is based. The institution and filing of an appeal pursuant to this Subsection is an administrative remedy to be employed prior to the institution and filing of any civil action against the County concerning the subject matter of the appeal.

3. Any appeal of the Director of Purchasing's determination concerning a protested solicitation or proposed award must be accompanied by an appeal bond in a form prescribed by the Director in an amount equal to one percent (1%) of the estimated contract amount as defined in Subsection 21.118.a.5 of this Code, or \$2,500.00 for a protest resulting from a RLI, and

conditioned upon payment of all costs and fees awarded the County pursuant to Subsection c.7 of this section. In the case of a RLI, the appeal bond shall be in the amount of \$2,500.00. In lieu of the appeal bond, the County may accept cash, money order, certified check, or cashier's check, payable to Broward County Board of County Commissioners. The appeal bond shall not be waived for appeals pursuant to Subsection 21.120.a.2 of this Code. The appeal bond shall remain in place until a written final determination is made by the hearing officer. Failure to post and maintain the required appeal bond shall cause the immediate dismissal of the appeal.

4. *Stay of Procurements During Appeal.* In the event of a timely appeal under this section, the County shall not proceed further with the solicitation or with the award of this contract until a written final determination is made by the hearing officer or a written determination is made by the Director of Purchasing that the solicitation must continue or award of the contract must be made without delay in order to protect the substantial interest of the County.

b. *Hearing Date.* After the receipt of the notice of appeal, the County shall schedule a hearing before a hearing officer, at which time the person shall be given the opportunity to demonstrate why the decision of the Director of Purchasing should be overturned.

c. *Hearing Procedure.* The procedure for any hearing required by this article shall be:

1. The County shall cause to be served upon the person a notice of hearing, stating the time and place of the hearing. The notice of hearing shall be sent by certified mail, return receipt requested, to the mailing address of the vendor.

2. The person shall have the right to be represented by counsel, to call and examine witnesses, to introduce exhibits, to examine opposing witnesses on any relevant matter, even though the matter was not covered under direct examination, and to impeach any witness regardless of which party first called the witness to testify.

3. In any hearing before the hearing officer, irrelevant, immaterial or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a trial in the courts of Florida.

4. The hearing officer shall be able to compel the attendance of witnesses, if requested by a party, by issuance of an administrative subpoena served by certified mail or by any other process and service authorized by law. The hearing officer shall only determine whether procedural due process has been afforded, whether essential requirements of law have been observed, and whether the Director of Purchasing's findings are arbitrary, capricious, or an abuse of discretion, or whether such findings are in accordance with the law or are unsupported by substantial evidence as a whole. In cases involving determinations of responsiveness pursuant to Subsection 21.83.d of this Code, the hearing officer shall only determine whether the Selection Committee's determination is arbitrary and capricious. In cases involving determinations of violation of Section 1-266, Code of Ordinances, relating to the cone of silence, the hearing officer shall only determine whether there has been a violation of the ordinance. Substantial evidence means such relevant evidence as a reasonable person might accept as adequate to support a conclusion. When all parties are represented by counsel, upon a written motion made at least ten (10) days prior to the scheduled hearing date, the hearing officer may allow local depositions of the parties who have personal knowledge of the protest and who will be unavailable to testify at the hearing. The hearing officer may grant the motion of any person having standing under Florida law to intervene

in the proceedings. The hearing officer must rule upon any preliminary motions or motions to intervene before the commencement of a hearing held under this section. Such motions shall be made at least ten (10) days prior to the date the hearing is scheduled. The motions may be argued at the final hearing or at a motion hearing noticed prior to the date of the final hearing. When all parties are represented by counsel, the hearing officer may also allow each party one (1) written request for production of documents, on an expedited basis, prior to the hearing and may issue subpoenas duces tecum for witnesses to bring documents to the hearing. Any motions allowed by this section must be made at least ten (10) days before a hearing is scheduled and served upon all parties, to be considered.

5. Within thirty (30) days from the hearing, the hearing officer shall complete and submit to the county and the person requesting said hearing a final order consisting of the findings of fact and conclusions of law as to the granting or denial of the appeal. The hearing officer shall uphold or reverse the decision giving rise to such protest but may not grant any allied, additional, alternative, or supplemental relief in the same order.

6. This procedure should be concluded prior to the institution of any civil action regarding the same subject matter. Appeal from the decision of the hearing officer shall be by certiorari to the circuit court in accordance with the Florida rules of Appellate procedure and shall be based on the record established before the hearing officer.

7. The appeal bond required by this Subsection shall be conditioned upon the payment of all costs and fees, excluding attorney's fees unless allowed for in this Subsection, incurred by the County in the appeal and which shall be included in the final order if the hearing officer denies the appeal. Upon payment of such costs and fees by the protester filing the appeal, the bond shall be returned. If the hearing officer grants the appeal, the appeal bond shall be returned to the protestor. Upon timely and proper written motion of the County, the hearing officer shall be empowered, in the exercise of sound professional discretion, to award attorney fees to the County if the hearing officer finds that the protestor, or its counsel, knew or should have known that the claim was not supported by facts or law.

8. All hearings shall be held in Broward County, Florida and Florida law will apply.

(1988-0180, 1-12-88; 1998-1021, 10-6-98; 2001-1071, 10-23-01; 2002-685, 7-9-02; 2004-732, 8-24-04; 2006-401, 6-13-06; 2009-316, 4-28-09; 2010-106, 3-9-10; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.121. - Reinstatement.

a. *Application.* A debarred person may only be reinstated upon submission of an application to the Director of Purchasing. Each application for reinstatement (after the term of debarment has been completed) shall include the following information:

1. The name, address and telephone number of the party making the request or the party's representative.
2. A statement of the financial responsibility of the company.
3. A statement of facts indicating how the circumstances which led to the debarment have been cured.
4. A list of jobs completed during the two years prior to the reinstatement application.

5. A list of all departments of the County for which the person has performed work.

b. *Grounds.* Request for reinstatement during the period of debarment shall be made in writing based upon the following.

1. Discovery of new and material evidence not previously available.
2. Dismissal of the indictment or reversal of the conviction.
3. Bona fide change in ownership or management sufficient to justify a finding of present responsibility.

c. *Procedures.* The determination whether to reinstate shall be based on the written submission of evidence, without further hearing. Upon consideration of the written submission, the Director of Purchasing shall make a determination whether or not reinstatement is warranted. If the Director of Purchasing determines that the person should not be reinstated, the person may request a hearing before the hearing officer in accordance with Section 21.120

(1990-2809, 9-11-90; 2011-696, 11-8-11)

21.122. - Termination of Contract; Rescission of Award.

Termination of any contract or rescission of award must be made by the awarding authority; and, in all cases where the Board takes this action, it must be based upon the Director of Purchasing's recommendation. The Director of Purchasing will examine the circumstances and reasons behind the breach of contract, or other reasons for rescission or termination, and determine if there is a solution possible in the situation. If a breach of contract occurs, or rescission of award or termination of contract is necessary, the Director of Purchasing may suspend or debar the subject vendor for failure to perform under the terms of the Broward County Procurement Code.

(1999-0215, 3-2-99; 2011-696, 11-8-11)

21.123—21.125. - Reserved.

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

[21.126. - Applicability of this Part.](#)

[21.127. - Remedies Prior to an Award.](#)

[21.128. - Remedies After an Award.](#)

[21.129. - Disclaiming Responsibility for Improper Purchasing.](#)

[21.130—21.134. - Reserved.](#)

21.126. - Applicability of this Part.

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

and regulations.

(1988-0180, 1-12-88)

21.127. - 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 this Procurement Code or rules or regulations, the solicitation or proposed award shall be:

- a. Canceled; or
- b. Revised to comply with the rules or regulations.

(1998-1021, 10-6-98)

21.128. - Remedies After an Award.

If after an award it is determined that a solicitation of award of a contract was in violation of this Code or rules and regulations, then:

- a. *Good Faith of Vendor.* If the person awarded the contract has not acted fraudulently or in bad faith:
 1. The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the County, or
 2. The contract may be terminated in a manner designed to eliminate any damages to the contractor.
- b. *Bad Faith of Vendor.* If the person awarded the contract has acted fraudulently or in bad faith:
 1. The contract may be declared null and void, or
 2. The contract may be ratified and affirmed if such action is in the best interest of the County. Such action does not prejudice the County's rights to such damages as may be appropriate.

(1988-0180, 1-12-88)

21.129. - Disclaiming Responsibility for Improper Purchasing.

The Board may disclaim responsibility and liability for any expenditure or agreement for expenditure arising from a procurement made in its name, or the name of any governmental body under its authority by an unauthorized person or any person acting outside this Code or their authorization or delegation as provided for by this Code. The expense of any such disclaimed transaction will become the personal liability of the individual who acted improperly.

(1988-0180, 1-12-88)

21.130—21.134. - Reserved.

PART XI. - INTERGOVERNMENTAL RELATIONS

[21.135. - Cooperative Purchasing.](#)

[21.136—21.140. - Reserved.](#)

21.135. - Cooperative Purchasing.

a. *Cooperative Purchasing Authorized.*

1. Scope.

(a) Broward County Purchasing Division may either participate in, sponsor, conduct, or administer cooperative purchasing agreements for the procurement of any supplies, services or construction with one or more local public procurement units or external procurement units, in accordance with an agreement entered into between the participants. Such cooperative purchasing may include but is not limited to joint or multiple party contracts between public procurement units and open-end contracts which are made available to local public procurement units. The actual award shall be made by the appropriate awarding authority of Broward County. The awarding authority is hereby authorized to award purchases or contracts that are the result of cooperative purchasing agreements or that have been awarded by a local public procurement unit or external procurement unit as long as generally acceptable standards of public procurement have been followed. If Broward County is the lead agency, the award will be made by the authorized awarding authority.

(b) The awarding authority is authorized to enter into any cooperative purchasing agreement with a local procurement unit or any public procurement unit for the purpose of joint procurement of goods or services. Such purchases will be made using the terms and conditions of the Co-op lead agency or the Co-op accepted terms and conditions which may not follow all requirements of the Broward County Procurement Codes or Ordinances, but follow generally accepted public procurement principles.

2. The Purchasing Division is expressly authorized to directly purchase from contracts generated by the State of Florida, and the General Services Administration of the Federal Government, as well as other units of the federal Government, PRIDE, and Respect of Florida. Such purchases are to be in accordance with the terms and conditions of the contract held by the State or Federal entity. The Director of Purchasing is expressly authorized to purchase directly, from vendors holding Federal contracts and offering to sell to the County at the exact or lower prices than the Federal Government, but at terms and conditions agreed upon by the vendor and the Director of Purchasing in an amount up to the Director of Purchasing's award authority.

b. *Sale, Acquisition or Use of Supplies by a Public Procurement Unit.* Broward County Purchasing Division may sell to, acquire from or use any supplies or services belonging to a local public procurement unit or external procurement activity, independent of the requirements of this Code, with the award made by the appropriate awarding authority.

c. *Public Procurement Units in Compliance with Code Requirements.* Where a local public procurement unit or external procurement activity administer a cooperative purchase activity complying

with the generally accepted public procurement principles, the Broward County Purchasing Division participating in such a purchase shall be deemed to have complied with the Code.

d. *Contract Controversies.* Any controversies concerning the award or processing of a contract which has been entered into on a cooperative basis shall be remedied under the rules and regulations of the entity advertising the contract.

e. *Authority to Enter into Contract awarded by Other Governmental Units.* The Director of Purchasing shall have the authority to enter into a contract awarded by a public procurement unit if the public procurement unit and-or the vendor agree to such an award of their contract and the procurement was accomplished under generally accepted public procurement principles. The actual award of such a contract shall be made by the applicable awarding authority.

(1988-0180, 1-12-88; 1998-1021, 10-6-98; 2001-1071, 10-23-01; 2011-696, 11-8-11)

21.136—21.140. - Reserved.

PART XII. - SMALL BUSINESS ENTERPRISES

[21.141. - Policy.](#)

[21.142—21.146. - Reserved.](#)

21.141. - Policy.

The Board of County Commissioners has determined that the County shall take affirmative action to increase the participation of small business enterprises in all County procurements administered through the Central Procurement System of Broward County, to include, as appropriate, the use of annual goals for the procurement of all classes of goods and services, goals on individual contracts, and reserves.

(1988-0180, 1-12-88; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.142—21.146. - Reserved.

PART XIII. - RISK MANAGEMENT IN PROCUREMENT

[21.147. - Bid or Proposal Security.](#)

[21.148. - Performance and Payment Bonds.](#)

[21.149. - Indemnification.](#)

[21.150. - Insurance Requirement.](#)

[21.151. - Solicitation for Insurance.](#)

[21.152—21.155. - Reserved.](#)

21.147. - Bid or Proposal Security.

- a. *Bid Security Allowed on any Solicitations.* The Director of Purchasing may require a Bid Security for any Bid Invitation, Two-Step Contracting Process, or Request for Quotation issued by the Purchasing Division. The security shall be a bond provided by a surety company authorized to do business in this state or the equivalent in cash, certified check, cashier's check, irrevocable letter of credit, or an alternate form of security for the same purpose, subject to the same conditions and in a form acceptable to the Office of the County Attorney as a bid security.
- b. *Amount of Bid Security.* Bid security shall be a percentage amount determined by the Director of Purchasing of the total amount of the bid.
- c. *Rejection of Bids for Noncompliance with Bid Security Requirements.* When the solicitation requires security, noncompliance mandates the bids be rejected, unless it is determined that the bid fails to comply in a non-substantial manner with the security requirements. Failure to supply bid security with the bid at the time of the bid opening shall automatically disqualify the bidder as non-responsive to the requirements.
- d. *Withdrawal of Bids.* After bids are opened, they shall be irrevocable for one hundred twenty (120) days or a period specified in the invitation for bids, except as provided in Subsection 21.30.f.4(b) of this Code. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid security.

(1988-0180, 1-12-88; 1995-0154, 2-7-95; 1998-1021, 10-6-98; 2011-086, 3-8-11; 2011-696, 11-8-11)

21.148. - Performance and Payment Bonds.

- a. *Bonds Required When Deemed Necessary by Purchasing.* Performance and payment bonds or equivalent acceptable security shall be required at the discretion of the Director of Purchasing.
- b. *Bond Must be Delivered Prior to Issuing Contract Document.* If required, a performance and payment bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County shall be presented to the County prior to issuance of a contract document.
- c. *Substitutes for Bonds Acceptable.* In lieu of a performance and payment bond, the County may accept cash, money order, certified check, cashiers check, or irrevocable letter of credit. Such alternate form of security shall be for the same purpose and shall be subject to the same conditions as a performance and payment bond.
- d. *Reduction of Bond Amount.* The Director of Purchasing may reduce the amount of performance and payment bonds required on a specific contract. Disclosure of the reduction shall be present in the Invitation for Bids.
- e. *Authority to Require Additional Bonds.* Nothing in this section shall be construed to limit the authority of the Director of Purchasing to require a performance bond or other security in addition to those bonds, or in circumstances other than those specified in this Code.

(1988-0180, 1-12-88)

21.149. - Indemnification.

To the extent allowed by law, all contracts for goods and/or services shall provide that the contractor shall indemnify and save harmless the County, its officers, agents and employees from any injuries or damages received by any person during any operations connected with the contract, or by use of any improper materials or by any act or omission of the contractor or contractor's subcontractors, agents, servants or employees.

(1988-0180, 1-12-88; 2001-1071, 10-23-01)

21.150. - Insurance Requirement.

a. The Risk Management Division or an individual specializing in risk management will review, as requested, special conditions and instructions to bidders for the solicitation of bids or quotations for supplies, services, or construction. Staff with special knowledge in Risk Management will complete a sample certification reflecting the insurance requirements which shall be contained in the solicitation documents.

b. Upon awarding of a bid or quotation, a specialist in risk management will review insurance certifications, approving those which comply with the requirements of the solicitation. Non-approved certifications will be returned to the Purchasing Division with the reasons for non-approval and instructions as to how the certification may be corrected. The Risk Management Division or individual specializing in risk management will advise the Purchasing Division of cancellation or failure to maintain insurance upon receipt of notification. The Purchasing Division shall not allow any contract to continue without proper insurance in effect after they have been so notified of the lapse of the requisite insurance.

(1998-1021, 10-6-98)

21.151. - Solicitation for Insurance.

All solicitations for insurance will contain a section that requires the proposers to divulge to the County the commission they are receiving for the insurance being proposed.

(1998-1021, 10-6-98)

21.152—21.155. - Reserved.

PART XIV. - COMPLIANCE WITH ALL APPLICABLE LAWS

[21.156. - Law and Grant Requirement.](#)

21.156. - Law and Grant Requirement.

If any situation where compliance with this Code will place the County in conflict with state or federal law or the terms of any grant, the County shall comply with such Federal or state law, grant

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requirements, or authorized regulations which are mandatorily applicable and which are either not reflected in this Code or are contrary to provisions of this Code.

(1988-0180, 1-12-88; 2011-696, 11-8-11)