

ORDINANCE NO. 2013 - 69

**AN ORDINANCE REPEALING ORDINANCE 87-25 AS AMENDED, WHICH ORDINANCE ESTABLISHED THE COLLIER COUNTY PURCHASING DEPARTMENT AND ADOPTED A PURCHASING POLICY, AND REPLACING IT WITH THIS NEW ORDINANCE, TO BE KNOWN AS THE COLLIER COUNTY PURCHASING ORDINANCE, WHICH ORDINANCE SETS FORTH ITS PURPOSE AND APPLICABILITY; PROVIDES FOR DEFINITIONS; ESTABLISHES AND SETS FORTH THE DUTIES OF A PURCHASING DEPARTMENT AND PURCHASING DIRECTOR; PROVIDES FOR A PURCHASING MANUAL; PROVIDES FOR PURCHASES UNDER \$50,000, AND FOR PURCHASES OVER \$50,000; PROVIDES FOR A COMPETITIVE BID PROCESS, THE PROCUREMENT OF PROFESSIONAL SERVICES, COMPETITIVE PROPOSALS, AND PROCUREMENT OF DESIGN-BUILD CONTRACTS; ESTABLISHES POLICIES FOR SMALL AND DISADVANTAGED MINORITY AND WOMEN BUSINESS ENTERPRISES AND FOR PREFERENCE TO LOCAL BUSINESSES; PROVIDES FOR PAYMENT OF INVOICES AND ADVANCE PAYMENTS FOR GOODS AND SERVICES; PROVIDES FOR PROCUREMENTS BASED ON STANDARDIZATION, COOPERATIVE PURCHASING ORGANIZATIONS AND GOVERNMENT CONTRACTS; SETS FORTH A PROCEDURE FOR CONTRACT ADMINISTRATION AND FOR BONDS; PROHIBITS UNAUTHORIZED PURCHASES INCLUDING SUBDIVIDING PURCHASES; SETS FORTH A PROCEDURE FOR BID PROTESTS AND CONTRACT CLAIMS; PROVIDES FOR PURCHASES DURING EXIGENT CIRCUMSTANCES, EMERGENCIES AND BOARD RECESS PERIODS; PROVIDES FOR INSPECTING AND TESTING; PROVIDES FOR SURPLUS PROPERTY; PROVIDES FOR A PURCHASING CARD PROGRAM; PROHIBITS CONFLICT OF INTERESTS; SETS FORTH A PROCEDURE FOR THE DEBARMENT AND SUSPENSION OF VENDORS; AUTHORIZES THE BOARD TO WAIVE THESE PROVISIONS WHEN APPROPRIATE; AND LASTLY PROVIDES FOR CONFLICT AND SEVERABILITY, INCLUSION INTO THE CODE OF LAWS AND ORDINANCES, AND AN EFFECTIVE DATE.**

WHEREAS, the Board of County Commissioners (the Board) desires to seek the maximum value for the County by procuring the best value in obtaining commodities and contractual services; and

WHEREAS, the Board must approve all purchases for valid public purpose and approve all expenditures; and

WHEREAS, obtaining as full and open competition as possible on all purchases and contracts and maximizing volume discounts by consolidating purchases and buying "in bulk" when practical serves to further the County's goals and is in the best interest of the taxpayers of Collier County; and

**WHEREAS**, the Board of County Commissioners desires to ensure the County receives all tax exemptions to which it is entitled; and

**WHEREAS**, it is in the best interests of the County for all its agencies and departments to cooperate so as to secure maximum efficiency.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, that:**

**SECTION ONE: Title and Citation.**

This Ordinance shall be known and may be cited as the "Collier County Purchasing Ordinance" or "Purchasing Ordinance."

**SECTION TWO: Purpose.**

The purpose of this Purchasing Ordinance is to codify and formalize Collier County's Purchasing Policy, to provide for the fair and equitable treatment of all persons involved in public purchasing by the County, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity. Any provision of this Ordinance in conflict with statute is null and void as to the conflict.

**SECTION THREE: Applicability.**

(a) This Purchasing Ordinance applies to the procurement of goods and services by the County after the effective date of this Purchasing Ordinance. This Purchasing Ordinance shall apply to all expenditures of public funds by the Board of County Commissioners for public purchasing, irrespective of the source of the funds. Nothing in this section shall prevent the County from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

(b) Nothing contained herein shall be construed as requiring Collier County's Constitutional Officers (Clerk of the Circuit Court, Property Appraiser, Sheriff, Supervisor of Elections, and Tax Collector), Court Administration, State Attorney, Public Defender or the Collier County Metropolitan Planning Organization non-county funds to be covered by the provisions of this Purchasing Ordinance. However, the services of the Collier County Purchasing Department and Purchasing Director may be made available for consultation.

**SECTION FOUR: Definitions.**

*Agency* shall mean all departments, divisions, units and offices under the Board of County Commissioners, including the Collier County Redevelopment Agencies, the Collier County Airport

Authority, Collier County Water Sewer District and all departments under the auspices of the County Manager.

*Change Order* shall mean a written order by a project manager, approved by the Purchasing Director and the Board of County Commissioners, directing the contractor to change a contract's amount, requirements, or time. All changes must be within the original scope of the contract and in accordance with the Board approved contract's changes clause or, if no such clause is set forth within the agreement, in accordance with this Purchasing Ordinance.

*Consultant / Contractor / Supplier / Vendor* shall mean a provider of goods or services to the County agency. These terms may be used interchangeably.

*Continuing Contract* shall mean a contract for professional services with no time limitation except that the contract must include a termination clause. Continuing contracts must contain sufficient details of goods and services to be procured for proper audit.

*County* shall mean Collier County.

*County Manager* shall mean the County Manager or County Administrator of Collier County, or designee, as defined in the County Administration Law of 1974, Ch. 125, Part III, Florida Statutes.

*Disadvantaged Business Enterprise* shall mean a small business concern certified by the Department of Transportation to be owned and controlled by socially and economically disadvantaged individuals as defined by the Surface Transportation and Uniform Relocation Act of 1987.

*Extension* shall mean an increase in the time allowed for the contract period due to circumstances which make performance impracticable or impossible, or which prevent a new contract from being executed. An extension must be in writing, and may not change the contract's amount or requirements unless provided for in the original solicitation, contract, or as otherwise stated in this Ordinance.

*Fixed Term Contract* is one in which the purchase of commodities or services are available for use Countywide by all agencies as deemed necessary in instances where it is impracticable to establish definitive quantities, ordering schedules, or the details of the specific work to be performed in advance of establishing the contracts(s). Typically, the term and fee schedules are fixed for a period of time. These contracts are often implemented by purchase orders or work orders and may be awarded to multiple firms.

*Invitation to Bid* shall mean a written or electronic solicitation for sealed competitive bids with the title, date, and hour of the public bid opening designated and specifically defining the commodity, group of commodities, or services for which bids are sought. It includes instructions prescribing all conditions for bidding and will be distributed to registered bidders simultaneously. The invitation to bid shall be used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.

*Invitation to Negotiate* shall mean a written or electronically posted solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations before the procurement of commodities or contractual services. The invitation to negotiate is a solicitation used by an agency which is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.

*Lowest responsive bid* shall mean a bid submitted by the apparent lowest, qualified and responsive bidder whose bid response meets the needs of the County, as set forth in the invitation to bid.

*Minority business enterprise* shall have the same definition as set forth in Florida Statutes Sec. 288.703, as amended from time-to-time, which presently means any small business concern as defined below which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least 51-percent-owned by minority persons who are members of an insular group that is of a particular racial, ethnic, or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group resulting in an underrepresentation of commercial enterprises under the group's control, and whose management and daily operations are controlled by such persons. For purposes of this definition, "small business" means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

*Purchase or procurement* shall mean the acquisition of goods or services.

*Purchasing Card* shall mean a credit card officially assigned to specific employees under the purview of the Board of County Commissioners for the purpose of transacting small and/or strategic purchases.

*Purchase Order* shall mean a contract which encumbers appropriated funds and which is directed to a single vendor to furnish or deliver commodities or services to the County.

*Purchasing Director* is the Purchasing Director of Collier County.

*Purchasing Manual* shall mean the Board of County Commissioners' adopted administrative procedures for implementing this Purchasing Ordinance.

*Purchasing Policy or Policies* shall mean the purchasing practices and procedures outlined in this Purchasing Ordinance.

*Qualified proposer* shall mean a proposer who has the capability to perform the services outlined in the request for proposal, and has the integrity and reliability which will assure good faith performance.

*Renewal* shall mean contracting with the same contractor for an additional contract term, only if pursuant to contract terms specifically providing for such renewal and prior to the expiration of the prior term.

*Request for Proposal* shall mean a written or electronic solicitation for sealed proposals with the title, date, and hour of the submission deadline designated. A request for proposal includes, but is not limited to, general information, applicable laws and rules, functional or general specifications, statement of work, proposals instructions, and evaluation criteria. An agency shall use a request for proposals when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables. Various combinations or versions of commodities or contractual services may be proposed by a responsive vendor to meet the specifications of the solicitation document.

*Responsive bidder or proposer* shall mean a person or entity that has submitted a bid or proposal which conforms in all material respects to the invitation to bid, request for proposals, or other methods of formal solicitation.

*Single source* refers to situations in which only one vendor is chosen to provide the goods or services because of its specialized or unique characteristics.

*Sole source* is when there is only one vendor capable of providing a good or service.

*Standardization* shall mean the adoption or selection of a common commodity (commodities), service(s), or a system(s) to be used by one or more County agencies to promote the cost-effective delivery of services.

*Woman Business Enterprise* shall have the same definition as *Minority business enterprise*, excepting that the small business concern is at least 51-percent-owned by a woman or women.

*Work Order* is a contract instrument issued under the terms and conditions of an approved continuing or fixed term agreement, which authorizes a contractor or consultant to perform a specific task within the broader scope of the master agreement. Nothing in the work order shall conflict with the terms and conditions of the fixed term contract, and all work done must fall within the scope and term of the underlying agreement.

**SECTION FIVE: Establishment of Purchasing Department and Purchasing Director.**

1. There is hereby established the Collier County Purchasing Department, which shall be a distinct administrative department under the direction of the County Manager.
2. The Purchasing Director of the Purchasing Department shall have the authority to negotiate all purchases for all Agencies except as required by State, Federal or Local Law. In keeping with Chapter 125, Florida Statutes, this Purchasing Ordinance grants to the Purchasing Director only those powers and duties which are ministerial in nature and does not delegate any governmental power imbued in the Board of County Commissioners as the governing body of the County pursuant to Fla. Const. Art. VIII, § 1(e). To this end, the below specifically enumerated powers are

to be construed as ministerial in nature, for the purpose of carrying out the Board's directives and policies.

**SECTION SIX: Duties of Purchasing Department.**

Within the constructs of this Ordinance, the Purchasing Department shall be responsible for:

1. Seeking Maximum Value: Acting to procure for the County the highest quality commodities and contractual services at least expense to the County.
2. Encouraging competition: Endeavoring to obtain as full and open competition as possible on all purchases, services and sales.
3. Purchasing Analysis: Keeping informed of current developments in the field of purchasing, prices, market conditions and new products, and securing for the County the benefits of research conducted in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition, and by private business and organizations.
4. Purchasing Manual: Preparing and recommending for adoption by the Board of County Commissioners administrative procedures for the Agency known as a Purchasing Manual for the implementation of this Purchasing Ordinance. In keeping with Ord. No. 2004-66, such procedures shall be made part of the Collier County Administrative Code, with all adoptions, amendments, additions, revisions, or modifications made by resolution of the Board. The Purchasing Manual shall be maintained and published on-line for the benefit of the public.
5. Forms: Prescribing and maintaining such forms to implement this Purchasing Ordinance and Purchasing Manual.
6. Non-Contract Purchases: Reviewing non-contract purchases under \$50,000 to determine if an aggregated contract approach may provide value and offer pricing advantages to the County.
7. Tax Exemption: Procuring items for the County to exercise its tax exemption status when eligible.
8. Suspension and Debarment of Vendors: Overseeing and facilitating the suspension and/or debarment of vendors as set forth below.
9. Inquiry and Control: Full authority to:
  - a. Question the quality, quantity, and kinds of items requisitioned in order that the best interests of the County are served;
  - b. Ensure the timely, proper and orderly acquisition of services to the various operating departments;
  - c. Ensure purchases are consistent with the Purchasing Ordinance;

- d. Determine if specific purchases should be approved by the Board prior to the purchase; and,
- e. Delegate Purchasing Director authority granted by this Purchasing Ordinance in whole or in part to Purchasing Department staff members.

**SECTION SEVEN: Purchases in General.**

The Board shall, prior to payment, approve all expenditures with a finding that such expenditures serve a valid public purpose.

**SECTION EIGHT: Purchases under \$50,000**

The process for making purchases under \$50,000 shall be set forth in detail in the Purchasing Manual. At a minimum:

1. A purchase shall not be artificially divided or split so as to qualify under this or any other section of this Purchasing Ordinance. Purchases under \$1,000 will generally be processed using a regular purchase order, or, a purchasing card in accordance with Section 27 of this Purchasing Ordinance.

2. Operating department staff should make all reasonable efforts to purchase goods and services under Board approved contracts. In the event a contract is not available, staff will procure the highest quality items or services at the least expense to the County after approval by the Purchasing Director. Only the Board's Purchasing staff may issue a qualification based solicitation.

**SECTION NINE: Formal Competitive Threshold (Purchases in Excess of \$50,000).**

A It is the intent of the Board of County Commissioners to establish an amount of fifty thousand dollars (\$50,000) as the County's threshold for formal competitive purchases. All such purchases shall be accomplished by competitive sealed bid, by competitive selection and negotiation (per Section 11) or by competitive proposals (per Section 12). Award of contracts shall be made by the Board to the lowest, qualified responsive bidder except where otherwise provided for in this Purchasing Ordinance or unless an exception is granted by the Board. Bid limits for requirements utilizing federal or state funds will be those required by said agency granting the funds or the County's requirements, whichever is more restrictive.

All formal competition shall be procured under the supervision of the Purchasing Director.

B. The requirement for formal competition may be waived by the Board of County Commissioners where permitted by law, under the following circumstances:

1. Purchase of library books, education and/or personnel tests, similar audio visual materials, periodicals, printed library cards, or other statutorily authorized exceptions.

2. Sole source purchases or single source purchases (pursuant to subsection D).
3. Valid public emergencies (pursuant to Section 25).
4. Where it is determined to be in the best interests of the County to do so.

C. All purchases subject to formal competition shall be awarded by the Board of County Commissioners.

D. Exemption For Single Source Commodities: Purchases of commodities and services from a single source may be exempted by the Board of County Commissioners from formal competition upon certification by the Purchasing Director of one the following conditions:

1. The item(s) is the only one available that can properly perform the intended function(s);
2. The recommended vendor/contractor is the only one ready, willing and able to meet the County's requirements; or
3. The requested exemption is in the County's best interest.

E. Use of Past Performance Data: In order to promote the quality delivery of commodities and services, County departments shall record and consider the past performance of vendors in the award of contracts exceeding the competitive threshold. This objective shall be accomplished as follows:

1. The Purchasing Department shall be responsible for each of the following:
  - a. Developing, implementing and maintaining administrative procedures, instructions and technologies necessary to collect past vendor performance data.
  - b. Ensuring that relevant past performance data is properly gathered and considered prior to award of subsequent contracts.
2. Operating departments shall be responsible for each of the following:
  - a. Conducting periodic performance evaluations of vendors under contract with the County pursuant to the procedures established in subsection 9.E.1a.
  - b. Considering the past performance of vendors during the evaluation of bids and proposals pursuant to the procedures established in subsection 9.E.1b.

F. Bidders and proposers competing for a prospective award (and their agents/representatives) will not be permitted to publicly or privately address the Board or individual Board members regarding a prospective purchase prior to the time of award unless requested to do so by the Purchasing Director or by a majority vote of the Board.



**SECTION TEN: Competitive Bid Process.**

**A. Notice Inviting Bids:**

1. **Announcement:** Notice inviting bids shall be publicly posted by the Purchasing Department in a consistent public location at least ten (10) days preceding the last day established for the receipt of bid proposals. Specific projects or grants may require longer posting periods, in those instances the specific requirements would be used. Bids may be solicited and/or received in one or more steps as permitted by law and deemed appropriate by the Purchasing Director.
2. **Scope of Notice:** The public notice required shall include a general description of the commodities/services to be purchased or sold, the bid instructions and specifications, and the time and place for opening bids.
3. **Bidders' List:** The Purchasing Director shall also solicit sealed bids from qualified prospective vendors/contractors who have registered their names on the Collier County Purchasing Department vendor database, which will electronically send them a notice of the proposed purchase or sale. Notices sent to the vendors/contractors on the Collier County Purchasing Department vendor database shall be limited to commodities or services that are similar in character and ordinarily handled by the trade group to which the notices are sent. Vendors/contractors are responsible for maintaining their company information profiles in the database to ensure proper notifications are received. Vendors/contractors may be suspended from the database by the Purchasing Director for continual non-response to formal solicitations and violations of the Purchasing Ordinance. The Purchasing Director may continue to issue formal solicitations and accept formal bids, proposals and other tenders using paper where appropriate.
4. **Bid Deposits:** When deemed necessary by the Purchasing Director, bid deposits shall be prescribed in the public bid notices. Said deposits shall be in the amount equal to five percent of the bid offer submitted unless a greater amount is required. The Purchasing Director shall have the authority to return the deposits of all bidders upon award and approval of the contract by the Board of County Commissioners. A successful bidder shall forfeit any deposit required by the Purchasing Director upon failure on the vendor's part to enter into a contract within ten (10) working days after written notice of award.
5. **Bid Addenda:** An addendum to a specification shall be defined as an addition or change in the already prepared specifications for which an invitation has been issued for formal quotations or an announcement has been posted for a formal sealed bid. Any addendum to a request for formal sealed bids shall be approved by the Department Purchasing Director. The addendum shall clearly point out any addition or change to the invitation for bids. The Purchasing Department shall be responsible for assuring that addenda are available on the on-line bidding website and that all prospective bidders who have downloaded specifications are notified of the addendum prior to opening of bids.

B. Procedure for Bids:

1. Sealed Bids: Sealed bids shall be submitted manually or electronically to the Purchasing Director.
2. Opening: Bids shall be opened publicly at the time and place stated in the public notices and shall be opened and witnessed by the Purchasing Department.
3. Tabulation: A tabulation of all bids received shall be made either electronically or manually by the Purchasing Department and shall be available for public inspection pursuant to Fla. Stat. Sec. 119.07.

C. Tie Bids: Where there are low tie bids, the award process shall first be subject to Fla. Stat. Sec. 287.087. In the event that all of the tied bidders comply with Fla. Stat. Sec. 287.087, the Purchasing Department shall determine if any of the bidders would be considered a local business as defined under Section 15 of this Purchasing Ordinance. If one (and only one) of the bidders is determined to be a local business, then award of contract shall be made to that bidder. In the event that two or more local bidders are tied thereafter, award of contract shall be made in accordance with Section 15 (2)(b) of this Purchasing Ordinance.

D. Rejection of Bids and Negotiation:

1. The Board of County Commissioners shall have the authority to reject any and all bids.
2. Subsequent to applying the procedures set forth under Section 15(2) (b) (where applicable), if the lowest, responsive bid exceeds the budgeted amount and, if the purchase is not funded in whole or in part with interagency grant dollars, the Purchasing Director may negotiate changes with the apparent lowest qualified and responsive bidder that will bring prices into budgeted limits subject to the final approval and acceptance of the Board. If the budgeted amount includes grant funds, the Purchasing Director shall be authorized to conduct such negotiations provided said actions are not prohibited by law or the grant conditions.
3. If no bid is received, the Board of County Commissioners may authorize the Purchasing Director to purchase by negotiation under conditions most favorable to the public interest and when said purchase will result in the lowest ultimate cost of the commodities or services obtained.

E. Waiver of Irregularities: The Board of County Commissioners shall have the authority to waive any and all irregularities in any and all formal bids within lawful guidelines.

F. Award of Contract: The Chair or Vice Chair in the Chair's absence, when authorized by majority vote of the Board, shall execute formal contracts having a binding effect upon the County. A formal contract shall be awarded by the Board of County Commissioners to the lowest, qualified responsive bidder. In addition to price the following may be considered:

1. The ability, capacity and skill of the bidder to perform the contract.
2. The ability of the bidder to perform the contract within the time required or the least time, if appropriate, without delay or interference.
3. The experience and efficiency of the bidder.
4. The quality and performance of previous contracts awarded to the bidder.
5. The previous and existing compliance by the bidder with laws and ordinances relating to the proposed contract.
6. The quality, availability and adaptability of the commodities or contractual services to the particular use required.
7. The ability of the bidder to provide future maintenance and service (where applicable).
8. Prior litigation or administrative proceedings against the County where the bidder or the bidder's principal was a party.
9. Prior litigation or administrative proceedings involving the bidder or bidder's principal.

All recommendations for award for contracts will be reviewed and approved by the Purchasing Director prior to presentation to the Board of County Commissioners.

**SECTION ELEVEN: Procurement of Professional Services.**

**A. Consultants' Competitive Negotiation Act.**

1. Contracts for professional architectural, engineering, landscape architectural or surveying and mapping services shall be procured in accordance with Fla. Stat. §287.055, referred to as the Consultants' Competitive Negotiation Act (CCNA).
2. *Continuing contract.* The County is authorized to enter into a continuing contract for CCNA services in accordance with the CCNA, whereby the firm provides professional services to the County for projects in which construction costs do not exceed \$2,000,000, for study activity if the fee for each individual study under the contract does not exceed \$200,000; or for work of a specified nature as outlined in the contract required by the County, with the contract being for a fixed term or with no time limitation, except that the contract must provide a termination clause.
3. *Ranking of firms.* The County, through the competitive proposal process, shall make a finding that the firm or individual to be employed is duly qualified to render the required

service. The evaluation committee shall review statements of qualifications and performance data submitted in response to the public solicitation and shall select, in order of preference, no fewer than three firms deemed to be the most highly qualified, if at least three firms respond to the solicitation. If less than three firms respond, and after meeting due diligence, it is decided by the Purchasing Director that every effort was made to comply with CCNA requirements, the County will conduct discussions with, and may require public presentations by, the responding firms regarding their qualifications, approach to the project and ability to furnish the required services.

4. *Evaluation criteria.* Pursuant to the CCNA, the evaluation criteria for ranking shall include factors such as: ability of firm and its professional personnel; firm experience with projects of a similar size and type; firm's willingness and ability to meet the schedule and budget requirements; volume of work previously awarded by the county; effect of the firms recent/current and projected workload; minority business status; location; past performance and when required, the public presentation. For continuing contracts, ranking and award shall be based on the criteria identified in the RFP document. For non-continuing contracts or project specific contracts, public presentation may be required.

5. *Public presentation.* The evaluation criteria for public presentation shall include factors such as the firm's understanding of the project, ability to provide required services within the schedule and budget, qualifications and approach to the project.

6. *Contract negotiations.* The ranking of firms for all CCNA contracts shall be presented to the Board of County Commissioners for consideration and approval. Upon Board approval of firm rankings, staff shall negotiate a contract with the most qualified firm (number one ranked firm) for professional services for compensation which is deemed to be fair and reasonable. Detailed discussions must be held by the firm and the County to establish the scope of the project and the exact services to be performed by the firm. Should the County and the firm fail to agree upon the terms of an acceptable contract, negotiations with the top firm shall be terminated and negotiations with the second ranked firm shall commence. If again unsuccessful, the process is repeated with the next ranked firm. This process is continued until a mutually agreeable contract is concluded or the project is abandoned, or the procurement process is otherwise terminated.

B. *Other Professional Services.* Because differences in price may only be a minor concern compared to qualitative considerations, professional services that fall outside the scope of the CCNA except as otherwise provided by law and outlined below, may be exempted by the Purchasing Director from the competitive bidding process. Instead, professional services will be typically acquired through one of the following methods:

1. Competitive Selection and Negotiation as set forth immediately above; or
2. Competitive Proposals (pursuant to Section 12).
3. In addition to the definition set forth in the CCNA, a professional service shall be defined as assistance obtained in support of County operations from an independent contractor in one or more of the following professional fields:

- a. Appraisal Services - real and personal property appraisers.
  - b. Audit and Accounting Services - auditors and accountants (excepting the selection of the annual auditor which shall be conducted as per Section 11.45, F.S.).
  - c. Consultants - planning, management, technological or scientific advisors.
  - d. Financial Services - bond counsel, rating and underwriting, financial advisor, and investment services.
  - e. Legal Services - attorneys and legal professionals.
  - f. Medical Services - medicine, psychiatry, dental, hospital, and other health professionals.
4. Final selection of the professional service provider (award of contract) shall be made by the Board of County Commissioners.
  5. Requests for outside legal services will be consistent with both this Purchasing Ordinance and the County Attorney's Ordinance (Ord. No. 2013-34). The retention of services from experts or consultants for purposes of preparing for or defending against imminent or pending litigation or administrative proceedings shall be exempt from all competitive requirements of this Purchasing Ordinance, and must first be approved by the Board.

**SECTION TWELVE: Competitive Proposals.**

A. The Competitive Proposals process is a method of contract selection that may be utilized by the Purchasing Director under circumstances where one or more of the following conditions exist:

1. Where qualitative considerations are of equal or greater concern than pricing considerations.
2. Where the conditions of the purchase do not lend themselves to the formal sealed bid process or the award of a firm, fixed fee contract.
3. Where the County is incapable of specifically defining the scope of work for which the commodity(s) or service(s) is required and where the vendor is asked to propose a commodity(s) or service(s) to meet the needs of the County.
4. Where the County desires to enter into a single contract for the design and construction of a public construction project(s).

B. For purchases in excess of the formal competitive threshold and where appropriate or required by law, the competitive solicitation process will be utilized. The process will be conducted in a manner similar to the sealed bid process as set forth under Section 10 except where otherwise stated in this section. The competitive proposals process shall proceed as follows:

1. A Request for Proposals (RFP) will be prepared and distributed. Notice of said request(s) shall be publicly posted by the Purchasing Department at least 21 calendar days preceding the last day established for the receipt of proposals.
2. Each Request for Proposals shall identify the evaluation procedures and criteria to be applied to the selection of the best proposal among the respondents. Each RFP pertaining to the award of a design/build contract(s) shall be subject to the requirements of Fla. Stat. Sec. 287.055 and section thirteen below.
3. Prior to the announcement and distribution of the RFP, a selection committee shall be appointed by the County Manager to evaluate the proposals received.
4. Proposals may be solicited and/or received in one or more steps as permitted by law and deemed appropriate by the Purchasing Director. Unless otherwise prohibited by law, the Purchasing Director shall have the discretion to solicit and conduct simultaneous or concurrent negotiations with one or more firms.

**SECTION THIRTEEN: Procurement of Design-Build Contracts.**

A. Procurements for the design and construction of public construction projects may be obtained through a single contract with a design-build firm selected in a manner permitted under Fla. Stat. Sec. 287.055 and the procedures set forth in this section.

B. Upon completion of the Design Criteria Package, procurements of Design/Build services shall be processed in a manner consistent with Section 12 hereof entitled "Competitive Proposals."

C. The Board of County Commissioners may declare a public emergency, where appropriate and authorize the using Agency to negotiate an agreement for Board approval with the best qualified design-build firm available at that time.

**SECTION FOURTEEN: Small and Disadvantaged *Minority and Women* Business Enterprises.**

A. Policy Statement: Collier County stands committed to providing equal opportunities to small businesses and disadvantaged business enterprises (DBE), minority business enterprises (MBEs) and women business enterprises (WBEs) as well as to all vendors, consultants, contractors and subcontractors who seek to do business with the County.

Pursuant to this policy, Collier County encourages its vendors, consultants, contractors and subcontractors to provide qualified small businesses and DBE's with an equal opportunity to

participate in the formal competitive processes for the procurement of commodities and services by the County.

The Policy is not intended to require or to allow partiality toward or discrimination against any small business or DBE, MBE, WBE, or any other vendor, consultant, contractor or subcontractor on the basis of gender, race or national origin, or other such factors, but rather to create an opportunity for small businesses and DBEs, MBEs, WBEs, and all qualified vendors, consultants, contractors and subcontractors to participate in the County's formal competitive processes. Nothing in this Policy shall be construed to provide for or require any preference or set-aside based on gender, race, national origin or any other such factor.

B. Implementing Measures: In an effort to implement this policy, the County may undertake the following measures:

1. Designate the Purchasing Director to administer this policy.
2. Utilize outreach programs to identify, register and educate small businesses and DBEs, MBEs and WBEs to participate in the procurement/contract process which may include:
  - a. Attending trade fairs which include representatives from these enterprises.
  - b. Attending meetings and social events wherein these enterprises are present.
  - c. Utilizing publications aimed at reaching these enterprises.
  - d. Utilizing Purchasing Directories and other reference sources that list these enterprises.
  - e. Publicizing this Policy to encourage these enterprises to participate in the County's procurement process.
  - f. Other actions designed to identify opportunities for these enterprises who seek to provide commodities and services to the County.
3. Maintain a list of these enterprises.
4. Disseminate information regarding competitive opportunities with the County in order to allow qualified small businesses and DBEs, MBEs and WBEs to participate in the County's procurement process.

C. Conformity with Applicable Law: The provisions of this section shall be construed in conformity with applicable state and federal law. To the extent that state law conflicts with federal law, federal law shall supersede such state law.

**SECTION FIFTEEN: Procedure to Provide Preference to Local Businesses in County Contracts.**

Except where otherwise provided by federal or state law or other funding source restrictions or as otherwise set forth in this Purchasing Ordinance, purchases of commodities and services shall give preference to local businesses in the following manner:

(1) *"Local Business" defined*

Local business means the vendor has a current Business Tax Receipt issued by the Collier County Tax Collector for at least one year prior to bid or proposal submission to do business within Collier County, and that identifies the business with a permanent physical business address located within the limits of Collier County from which the vendor's staff operates and performs business in an area zoned for the conduct of such business. A Post Office Box or a facility that receives mail, or a non-permanent structure such as a construction trailer, storage shed, or other non-permanent structure shall not be used for the purpose of establishing said physical address. In addition to the foregoing, a vendor shall not be considered a "local business" unless it contributes to the economic development and well-being of Collier County in a verifiable and measurable way. This may include, but not be limited to, the retention and expansion of employment opportunities, support and increase to the County's tax base, and residency of employees and principals of the business within Collier County. Vendors shall affirm in writing their compliance with the foregoing at the time of submitting their bid or proposal to be eligible for consideration as a "local business" under this section. A vendor who misrepresents the Local Preference status of its firm in a proposal or bid submitted to the County will lose the privilege to claim Local Preference status for a period of up to one year.

(2) *Preference in purchase of commodities and services by means of competitive bid, request for proposals, qualifications or other submittals and competitive negotiation and selection.* Under any such applicable solicitation, bidders/proposers desiring to receive local preference will be invited and required to affirmatively state and provide documentation as set forth in the solicitation in support of their status as a local business. Any bidder/proposer who fails to submit sufficient documentation with their bid/proposal offer shall not be granted local preference consideration for the purposes of that specific contract award. Except where federal or state law, or any other funding source, mandates to the contrary, Collier County and its agencies and instrumentalities, will give preference to local businesses in the following manner:

(a) *Competitive bid (local price match option).* Each formal competitive bid solicitation shall clearly identify how the price order of the bids received will be evaluated and determined. When a qualified and responsive, non-local business submits the lowest price bid, and the bid submitted by one or more qualified and responsive local businesses is within ten percent of the price submitted by the non-local business, then the local business with the apparent lowest bid offer (i.e., the lowest local bidder) shall have the opportunity to submit an offer to match the price(s), less one (1) dollar, offered by the overall lowest, qualified and responsive bidder. In such instances, staff shall first verify if the lowest non-local bidder and the lowest local bidder are in fact qualified



and responsive bidders. Next, the Purchasing Department shall determine if the lowest local bidder meets the requirements of Fla. Stat. Sec. 287.087 (Preferences to businesses with drug-free workplace programs). If the lowest local bidder meets the requirements of Fla. Stat. Sec. 287.087, the Purchasing Department shall invite the lowest local bidder to submit a matching offer, less one (1) dollar, within five (5) business days thereafter. If the lowest local bidder submits an offer that fully matches the lowest bid, less one (1) dollar, from the lowest non-local bidder tendered previously, then award shall be made to the local bidder. If the lowest local bidder declines or is unable to match the lowest non-local bid price(s), then award will be made to the lowest overall qualified and responsive bidder. If the lowest local bidder does not meet the requirement of Fla. Stat. Sec 287.087, and the lowest non-local bidder does, award will be made to the bidder that meets the requirements of the reference state law.

- (b) *Request for proposals, qualifications or other submittals and competitive negotiation and selection.* For all purchases of commodities and services procured through the Competitive Proposals (Section 12) or Competitive Selection and Negotiation (Section 11) methods not otherwise exempt from this local preference section, the RFP solicitation shall include a weighted criterion for local preference that equals 10 percent of the total points in the evaluation criteria published in the solicitation. Purchases of professional services as defined and identified under subsection 11B.2 (which are subject to Section 287.055, F.S.) and subsection 11B.3 (which are subject to Section 11.45, F.S.) shall not be subject to this local preference section.
- (3) *Waiver of the application of local preference.* The application of Local Preference to a particular purchase or contract may be waived upon approval of the Board of County Commissioners.
- (4) *Comparison of qualifications.* The preferences established herein in no way prohibit the right of the Board of County Commissioners to compare quality of materials proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals. Further, the preferences established herein in no way prohibit the right of the County Commission from giving any other preference permitted by law instead of the preferences granted herein.
- (5) *Reciprocity.* In the event Lee County, or any other Florida county or municipality ("local government") deemed appropriate by the Collier County Board of Commissioners, extends preferences to local businesses, Collier County may enter into an interlocal agreement with such local government wherein the preferences of this section may be extended and made available to vendors that have a valid occupational license issued by that specific local government to do business in that local government that authorizes the vendor to provide the commodities and services to be purchased, and a physical business address located within the limits of that local government. Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address. In addition to the foregoing, a vendor shall not be considered a "local business" unless it contributes to the economic development and well-being of the said local government whichever is applicable, in a verifiable and measurable way. This may include, but not be limited to, the retention and expansion of employment

opportunities, the support and increase to that local government's tax base, and residency of employees and principals of the business located within the limits of that local government. Vendors shall affirm in writing their compliance with the foregoing at the time of submitting their bid or proposal to be eligible for consideration as a "local business" under this section. In no event shall the amount of the preference accorded other local government firms exceed the amount of preference that such local government extends to Collier County firms competing for its contracts.

- (6) *Purview and administration of this Local Preference Policy.* This policy shall apply to all departments and units under the direct purview of the Board of County Commissioners. For purchases of \$50,000 or less, the Purchasing Department shall systematically encourage departments to include local vendors when soliciting quotations in accordance with this policy.

**SECTION SIXTEEN: Payment of Invoices.**

A. Agencies under the purview of the Board of County Commissioners shall be in compliance with Fla. Stat. Sec. 218.70, otherwise known as the "Local Government Prompt Payment Act." Pursuant to this, the requirements of this section shall apply to the following transactions:

1. The purchase of commodities and services;
2. The purchase or lease of personal property;
3. The lease of real property.

B. The County Manager shall establish and maintain a process that authorizes the payment of freight and delivery charges that are not specifically identified on the purchase order of less than \$500.

C. It shall be the responsibility of the County Manager, in consultation with the Clerk's Finance Director and operating departments, to establish procedures for the timely payment of all transactions as defined under subsection 16.A hereof. Such procedures shall include, but are not limited to the following:

1. Formally defining the County's requirements for the content and submission of a proper invoice, codifying the County's payment requirements and notifying each vendor of their availability.
2. Steps required for the receipt of all invoices and the prompt return of improper invoices.
3. Steps required for the resolution of payment disputes between the County and a vendor.

D. Each December, the Purchasing Director and the Clerk of the Courts Finance Director shall submit a report to the Board listing the number and total dollar amount of interest penalty payments made during the preceding fiscal year pursuant to Florida Statute 218.

**SECTION SEVENTEEN:      Advanced Payments for Goods and Services.**

Procedures for the pre-payment of goods and services with County funds including, but not limited to, dues and membership, insurance, maintenance agreements, subscriptions, travel arrangements, postage, and other purchases as prescribed by the Department of Financial Services through their Administrative Rules. As provided for in Fla. Stat. Sec. 28.235, the Clerk of the Circuit Court is authorized to make advanced payments on behalf of the County for goods and services based on those established procedures.

**SECTION EIGHTEEN:      Standardization, Cooperative Purchasing Organizations and Governmental Contracts**

A. Where standardization is determined to be desirable by the Board of County Commissioners or included in the Purchasing Manual, the purchase of commodities may be made by negotiation with the approval of the purchase by the Board.

B. Annually, the Board of County Commissioners will approve a list of authorized purchasing cooperative organizations and governmental schedules and contracts. The Purchasing Director may approve purchases using these approved cooperative organizations, agreements and contracts with no further action required by the Board providing that funds have been budgeted for these specific purposes.

Additionally, the Purchasing Director may join other public agencies in cooperative purchasing organizations and/or agreements if is determined to be in the County's best interest, and if the consortium agreement has not had prior Board approval. The use of any new cooperative agreement must be approved by the Board prior to the use of the agreement.

**SECTION NINETEEN:      Contract Administration.**

A. Contract Document: Every procurement of contractual services or commodities shall be evidenced by a written document containing all provisions and conditions of the procurement. Said document shall include, but not be limited to:

1. A listing of the scope of services to be performed or commodities to be purchased.
2. A provision specifying the criteria and the final date, or number of days, by which such criteria must be met for completion of the work.
3. A provision specifying the terms of cancellation by the County and where applicable, a provision specifying the terms of renewal.

4. Where applicable, a provision establishing the appropriate types and levels of insurance to be carried by the vendor. Said provision shall be employed in a manner consistent with minimum insurance standards approved by the Board of County Commissioners.
5. A provision requiring the contractor/vendor to inform the County if he/she has been convicted of a public entity crime subsequent to July 1, 1989.

A purchase order that embodies these provisions shall be sufficient documentation of the procurement. Except as otherwise provided in this Purchasing Ordinance, the Purchasing Director shall determine the circumstances under which a Board approved purchase order (and all documents included by reference) shall serve as the contract document.

B. Contract Manager: Every procurement of services shall be administered by the requesting Agency/Department.

C. Contract Changes: Notices issued under a purchase order or contract may be authorized and executed by the Purchasing Director, except notices that terminate a Board-approved purchase or contract in its entirety. Modifications to a Board approved purchase or contract, including but not limited to change orders, direct material purchases, notices to proceed or non-compliance, stop work notices, use of approved allowances between line items, supplemental agreements, amendments and changes by letter may be authorized and executed by the Purchasing Director provided that the change is not more than ten (10) percent of the current Board approved dollar amount. Such changes shall be reported monthly to the Board for approval by ratification. All material changes in scope of agreements must be approved by the Board in advance.

The proviso at the end of the previous paragraph shall not be applicable to term contracts or blanket purchase orders where the County desires to procure commodities and/or services on an as needed basis without having to obligate itself to a total contract amount. Rather, such purchases shall be based on fixed unit prices or other predetermined pricing methods and shall be limited in quantity by the amount of funds appropriated in the budget of the operating department(s). Such purchases shall be subject to all other provisions of this Purchasing Ordinance.

Notices that terminate an entire purchase or contract that was Board approved and contract modifications that increase the total contract amount beyond the limits set forth above as applicable, shall require the approval of the Board of County Commissioners. The Board shall have broad authority, within the limits of the law, to evaluate and approve any recommended contract modification without requiring further competition.

D. Contract Extension: Extension(s) of a Board-approved contract for commodities or non-construction services may be requested by the contract manager to the Purchasing Director in writing for a period not to exceed six (6) months (cumulatively) and shall be subject to the same terms and conditions set forth in the contract, if the extension period is provided for in the Board approved contract. The Purchasing Director shall have the authority to authorize and execute all such extensions, which must be issued prior to the expiration of the contract. Any extension(s) that exceed six months (cumulatively) shall be approved by the Board of County Commissioners.

E. Contract Renewal: The Purchasing Director shall authorize and execute renewals of contracts for commodities and/or services subject to the following conditions:

1. That the Contractor has performed in a satisfactory manner and that the Purchasing Director has received a request to renew from the Contract or Project Manager verifying the Contractor's satisfactory performance.
2. That the Board approved agreement provided for a renewal and is renewed subject to the terms and conditions set forth in the initial contract. Cost and term modifications are addressed in the original solicitation document and/or resultant contract.
3. That the renewal is done for a set period of time identified in the solicitation document and/or contract, commencing at the end of the contract period.

Proposed renewals that fail to meet one or more of the conditions set forth herein will require the approval of the Board of County Commissioners.

F. Contract Approval: All contracts for commodities and services shall be authorized by the Board of County Commissioners.

G. Work Orders: The Purchasing Director may execute any work order if the work order is equal to or below such Board approval parameters for work orders as are set forth in the Board approved term contract for services under which the work order is generated.

Work orders must be in sufficient detail to audit according to the approved contract.

H. Consent to Assignments of Contract: For all contracts, the Board of County Commissioners shall approve all assignments of contracts requested by the predecessor contracting party.

I. Authority Limitation and Delegation; Promulgation of Procedures:

The Purchasing Director may delegate to one or more Purchasing Department employees any or all aspects of the authority vested in the Purchasing Director.

All authority to execute documents that is vested pursuant to this Section 19 in the Purchasing Director or any other person shall be subject to the limits of any applicable federal, state or other law.

J. Payments to Contractors, Vendors and Consultants

Prior to the execution of a formal contract subject to this Purchasing Ordinance, the Purchasing Director shall establish a formal payment schedule and payment terms within the agreement. Such terms and conditions shall be consistent with the requirements of all applicable laws and the formal solicitation documents.

In accordance with Fla. Stat. Sec. 218.735(8), the Purchasing Director may establish, subject to Board approval, procedures to reduce to 5% the amount of retainage withheld from each subsequent progress payment issued to a contractor where applicable. The Purchasing Director may establish, in writing, a schedule(s) to further reduce the percentage of cumulative retainage held throughout the course of the project schedule where warranted and according to law. Recommendation to reduce the percentage of cumulative retainage shall be subject to the following:

1. That the term "cumulative retainage" is defined to mean "the dollar total of the funds retained from all payments issued under the contract divided by the gross dollar total of all monthly pay requests (or the total of all payment amounts deemed allowable by the project manager, whichever is less)".
2. That any decision to reduce retainage shall be formally communicated in a letter to the Contractor's representative and that the letter affirmatively states that the Contractor has performed the contract work in a satisfactory manner.
3. That the cumulative retainage not be adjusted until at least 50% of the work has been completed and payment has been issued.
4. That the Purchasing Director's letter expressly sets forth the percentage of cumulative retainage to be held for the remaining pay requests.

The Purchasing Director may authorize the partial release or payment of contract retainage to the contractor prior to final completion of all project work provided that:

1. The contractor has performed in a satisfactory manner to date as verified in writing by the Project Manager.
2. The total aggregate work under the agreement is at least 50% completed and accepted (i.e.; payments equaling at least 50% of the contract amount less retainage have been issued).
3. The retainage dollar amount to be released is based upon and consistent with the prevailing percentage of cumulative retainage being held at the time that the retainage is released.

**SECTION TWENTY: Performance and Payment Bonds.**

A contractor or vendor shall provide a surety bond from a surety company to guarantee full and faithful performance of a contract obligation and the payment of labor and material expended pursuant to a contract whenever, and in such amounts, as required by statute or otherwise as deemed necessary by the Purchasing Director. An irrevocable letter of credit from a financial institution operating within the State of Florida (or other alternative forms of surety as permitted under Florida law) may be sufficient in place of the performance bond if so provided for in the bid and contract documents. All such bonds or letters of credit shall be approved as to form by the County Attorney, and held by the Clerk's Board Minutes and Records Department.

**SECTION TWENTY-ONE: Unauthorized Purchases.**

All purchases made shall be consistent and in compliance with the Purchasing Ordinance. Any purchase or contract made contrary to the provisions hereof and contrary to Florida law shall not be approved and the County shall not be bound thereby.

**SECTION TWENTY-TWO: Prohibition against Subdivision.**

No contract or purchase shall be subdivided to avoid the requirements of this Purchasing Ordinance or of State law.

**SECTION TWENTY-THREE: Protest of Bid or Proposal Award.**

The purpose of this section is to accommodate legitimate protests concerning formal competitive invitations to bid or requests for proposals and recommended contract awards above the formal competitive bid or proposal thresholds prior to award of a contract by the Board of County Commissioners.

A. Any actual or prospective bidder or respondent to an Invitation to Bid or a Request for Proposal, who has a substantial interest and alleges to be aggrieved in connection with the solicitation or award of a contract, (hereafter referred to as "the protesting party") may protest to the Purchasing Director, who shall serve as the sole recipient of any and all notices of intent to protest and all formal protests.

B. With respect to a protest of the terms, conditions and specifications contained in a solicitation, including any provisions governing the methods for evaluation of bids, proposals or replies, awarding contracts, reserving rights for further negotiation or modifying or amending any contract, the protesting party shall file a notice of intent to protest within three (3) days, excluding weekends and County holidays, after the first publication, whether by posting or formal advertisement of the solicitation. The formal written protest shall be filed within five (5) days of the date the notice of intent is filed. Formal protests of the terms, conditions and specifications shall contain all of the information required for formal protests of recommended contract awards as set forth under subsection C. The Purchasing Director, shall render a decision on the formal protest and determine whether postponement of the bid opening or proposal/response closing time is appropriate. The Purchasing Director's decision shall be considered final and conclusive unless the protesting party files an appeal of the Purchasing Director's decision.

C. Any actual or prospective bidder or respondent to an Invitation to Bid or a Request for Proposal who desires to protest a recommended contract award shall submit a notice of intent to protest to the Purchasing Director within two (2) calendar days, excluding weekends and County holidays, from the date of the initial posting of the recommended award.

D. All formal protests with respect to a recommended contract award shall be submitted in writing to the Purchasing Director for a decision. Said protests shall be submitted within five (5)

calendar days, excluding weekends and County holidays, from the date that the notice of intent to protest is received by the Purchasing Director, and accompanied by the fee, as set forth below. The protesting party must have standing as defined by established Florida case law to maintain a protest.

The formal protest shall contain, but not be limited to the following information:

1. Name and address of County Agency affected and the solicitation number and title.
2. The name and address of the protesting party.
3. A statement of disputed issues of material fact. If there are no disputed material facts, the written letter must so indicate.
4. A concise statement of the ultimate facts alleged and of any relevant rules, regulations, statutes, and constitutional provisions entitling the protesting party to relief.
5. The protesting party's entitled demand for the relief.
6. Such other information as the protesting party deems to be material to the issue.

The formal protest shall contain all arguments, facts or data supporting and advancing the protestor's position. Under no circumstances shall the protestor have the right to amend, supplement or modify its formal protest after the filing thereof. Nothing herein shall preclude the County's authority to request additional information from the protesting party or other bidders or proposers in conjunction with the review and rendering of decisions on the protest, including any subsequent appeal.

E. In the event of a timely protest of contract award consistent with the requirements of this section, the Purchasing Director shall not proceed further with the award of the contract until all appropriate administrative remedies as delineated under this section have been exhausted or until the Board of County Commissioners makes a determination on the record that the award of a contract without delay is in the best interests of the County. During this process, the protesting party shall limit their communications with the County to the Office of the County Attorney, and neither the protesting party, their agents or their representatives shall have any private contact or discussions with individual County Commissioners, the County Manager, other County employees, or any independent hearing officer (where applicable) regarding the protest except such communications as may be required or permitted during a hearing, if applicable, or a meeting of the County Commission wherein the solicitation or award is to be considered.

F. The Purchasing Director shall review the merits of each timely protest and in consultation with the contract manager and other appropriate County staff, issue a decision stating the reasons for the decision and the protesting party's rights of appeal under this section. Said decision shall be in writing and mailed or otherwise furnished to the protesting party. The decision of the Purchasing Director shall be final and conclusive unless the protesting party delivers a subsequent written notice of appeal to the Purchasing Director within two (2) calendar days, excluding weekends and County holidays from the date of receipt of the decision. In filing a written objection to the Purchasing



Director's decision, the protestor shall not introduce new arguments or alter in any other way their protest submission. An appeal of the Purchasing Director's decision shall be limited to a review of the grounds set forth in the formal protest, and no new grounds or arguments will be introduced or considered.

G. In the event of a subsequent appeal pursuant to subsection F, the County Manager shall determine whether to appoint an independent Hearing Officer to review the formal protest and the Purchasing Director's decision. The Hearing Officer's review shall be limited to the grounds set forth in the formal protest, and shall be for the purpose of determining whether the County's intended action is arbitrary, capricious, illegal, dishonest or fraudulent. The protesting party shall have the burden of proof. The Hearing Officer shall consider the formal protest, the Purchasing Director's decision, and supporting documents and evidence presented at the hearing. In any hearing, 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. The Hearing Officer may grant the motion of any person having standing under Florida law to intervene in the proceedings. Persons or parties shall have the right to be represented by counsel in the proceedings, to call witnesses, and present evidence; provided, however, that the Hearing Officer shall not have the right to compel attendance of witnesses or to permit or compel any discovery.

The Hearing Officer will have a maximum of 60 days to schedule and conduct a hearing into the matter and issue a recommended finding of fact and an opinion in writing to the County Manager or designee for submission to the Board of County Commissioners. Should the Hearing Officer find in favor of the County, the protesting party pay, in full, the costs of the Hearing Officer. If the Hearing Officer's recommended decision is in favor of the protesting party, then the County will assume this cost.

The County Manager's discretion as to whether to appoint a Hearing Officer shall in no way afford the protestor the right to demand such an appointment or hearing. The decision of a Hearing Officer on a protesting party's appeal shall be submitted to the Board for its consideration as part of a final award decision. Nothing herein shall be construed as creating a right of judicial review of the Hearing Officer's decision, nor shall such decision be binding upon the Board. Additionally, nothing herein shall be construed as limiting the Board's right to reject any and all bids or proposals.

H. Decisions of the Purchasing Director and Hearing Officer (where applicable) will be provided to the protestor and other interested parties prior to the award recommendation being presented to the Board of County Commissioners. Neither the County Manager's decision nor the Hearing Officer's recommended decision shall be construed as an award recommendation triggering additional rights of protest pursuant to this policy. Notwithstanding anything set forth herein to the contrary, the Board of County Commissioners shall retain the authority to make the final award decision.

I. Failure to file a formal protest within the time and manner prescribed by this policy shall constitute a waiver of the right to protest by any protesting party as defined by subsection "A" of this policy.

J. As a condition of filing a formal appeal to the Purchasing Director's initial finding, the protesting party shall submit a non-refundable filing fee for the purpose of defraying the costs of administering the protest. The filing fee shall be submitted with the formal protest. Failure to pay the filing fee shall result in the denial of the protest. The amount of the filing fee shall be as follows:

<u>Estimated Contract Amount</u>	<u>Filing Fee</u>
\$250,000 or less	\$500
\$250,000.01 to \$500,000	\$1,000
\$500,000.01 to \$5 million	\$3,000
\$5 million or more	\$5,000

This fee may be modified by Resolution of the Board of County Commissioners.

**SECTION TWENTY-FOUR: Contract Claims.**

All actual or prospective claims arising against the County from contractors, vendors or any other party in direct privity with the County to provide goods or services shall first be directly addressed by the parties' administrative representatives in a manner consistent with the agreement between the parties and in accordance with the County's procedures Manual.

For any prospective or actual claims or disputes arising under any contract entered into by the County, the Purchasing Director must determine the facts of the dispute. All contract claims should be reported to the County Attorney's Office and Clerk's Finance for proper documentation and recording and to the Board for determining action.

**SECTION TWENTY-FIVE: Exigent Circumstances, Emergency and Board Absence Purchases.**

In case of an exigent circumstance, which is defined as any circumstance requiring immediate action or attention, a valid public emergency, or during the Board's extended recess session(s) (all efforts should be made to obtain Board approval prior to anticipated recesses) whereby a purchase is necessary, the County Manager shall authorize the Purchasing Director to secure by open market procedure as herein set forth, any commodities or services. The County Manager shall have the authority to take actions including, but not limited to the issuance of contracts, change orders, and/or supplemental agreements. Any action shall be reported at the first available meeting of the Board of County Commissioners. The County Manager under the same consultations noted above shall further be authorized to approve payment(s) to vendors at the time of or shortly after purchase should the circumstances warrant. These payments shall be reported at the first available meeting of the Board.

This section in no way constrains the provisions of Collier County's Civil Emergency ordinances or powers and authority pursuant to Fla. Stat. ch. 252, Emergency Management.

**SECTION TWENTY-SIX: Inspection and Testing.**

The Purchasing Director shall inspect, or supervise the inspection of, or cause to be inspected, all deliveries of commodities or services to determine their conformance with the specifications set forth in an order or contract.

A. Inspection by Operating Department: The Purchasing Director shall authorize operating departments to inspect all deliveries made to such operating departments under rules and regulations which the Purchasing Director shall prescribe.

B. Testing: The Purchasing Director shall have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications. In the performance of such tests, the Purchasing Director shall have the authority to make use of laboratory facilities of any Agency of the County or of any contracted outside laboratory.

**SECTION TWENTY-SEVEN: Purchasing Card Program.**

The Purchasing Director shall be responsible for the overall management and operation of the County's purchasing card program. For the purpose of this Purchasing Ordinance, a purchasing card is a credit card officially assigned to specific employees under the purview of the Board of County Commissioners' agency for the purpose of transacting small and/or strategic, contract, travel related, and other purchases made according to Section Eight. The Purchasing Director shall be authorized to assign cards to employees for these purchases. The Purchasing Director shall be responsible for establishing the following dollar limits for each assigned card:

A. Single Transaction Limit: Not to exceed \$1,000 per card unless otherwise authorized by the Purchasing Director.

B. Monthly Spending Limit: Not to exceed \$10,000 per card unless otherwise authorized by the Purchasing Director.

C. Strategic Purchases: The Purchasing Director may utilize (or delegate the authority to other Agency staff to utilize) a purchasing card to place orders that exceed the limits set forth under this section in instances where one or more of the following is true:

1. Where the purchase is to address a valid public emergency; or
2. Where the County will earn revenue through card program rebates; or
3. Where a vendor is requiring the County to order by purchasing card.

**SECTION TWENTY-EIGHT: Conflict of Interest.**

When procuring commodities or services using County funds, each entity and employee under the purview of the Board of County Commissioners shall comply with all applicable state and federal laws concerning ethics and conflict of interest. For state or federally funded projects, County entities and employees shall comply with all legal requirements, including the requirements of Part 85, Section 36(b)(3) of the Housing and Urban Development Code.

**SECTION TWENTY NINE: Debarment and Suspension.**

The County Manager may suspend and/or debar vendors, contractors, consultants and other interested and affected persons from active participation in obtaining County contracts upon approval of the Board. The purpose of any such action shall be to protect the County's interests and the integrity of the County's contracting process. The suspension and debarment processes shall be considered to be separate from and in addition to the award evaluation and vendor performance evaluation processes authorized elsewhere in this Purchasing Ordinance

A. Definition of Terms: For the purposes of this section, the following terms have been defined as follows:

1. *Affiliate* refers to associated business entities or individuals that control or could control the contractor or are controlled by the contractor or could be controlled by the contractor.
2. *Civil Judgment* refers to a judgment or finding of a civil offense by any court of competent jurisdiction.
3. *Contractor* means any individual or legal entity that:
  - a. Directly or indirectly (e.g.; through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a County contract for construction or for procurement of commodities and services, including professional services; or
  - b. Conducts business, or reasonably may be expected to conduct business, with the County as an agent, surety, representative or subcontractor of another contractor.
4. *Conviction* means a judgment or conviction of a criminal offense, felony or misdemeanor, by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
5. *Debarment* means action taken by the County to exclude a contractor from County contracting and County-approved subcontracting for a reasonable, specified period as provided herein.

6. Preponderance of the Evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
7. Subcontractor: Any individual or legal entity that offers or agrees to provide commodities or services to a party deemed to be a contractor under this section.
8. Suspension refers to action taken by the Purchasing Director to temporarily disqualify a contractor from County contracting or County-approved subcontracting pending action of the Board.

B. Suspension: The Purchasing Director shall have the authority to recommend to the Board the suspension of a contractor, subcontractor or person from consideration for award of contracts if there appears to be a reasonable basis for debarment as set forth herein. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. The suspension period shall not exceed three months without the approval of the County Manager.

C. Debarment:

1. Causes for Debarment: The prospective causes for debarment include one or more of the following:
  - a. 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.
  - b. Conviction under state or federal law 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.
  - c. Conviction under state or federal antitrust laws arising out of the submission of bids, proposals or other competitive offers.
  - d. Violation(s) of County contract(s) provisions, which is (are) deemed to be serious and to warrant debarment, including the failure, without good cause, to perform in accordance with the terms, conditions, specifications, scope, schedule or any other provisions of the contract(s).
  - e. Refusal to provide bonds, insurance or other required coverage and certifications thereof within a reasonable time period.
  - f. Refusal to accept a purchase order, agreement or contract, or perform accordingly provided such order was issued timely and in conformance with the solicitation and offer received.

- g. 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.
- h. Violation of the ethical standards set forth under applicable state or county laws.
- i. Debarment of the contractor by another public agency.
- j. Any other cause deemed to be so serious and compelling as to materially affect the qualifications or integrity of the contractor.

2. Procedure:

- a. The county department requesting the suspension or debarment action shall submit to the Purchasing Director a written complaint setting forth the reason(s) for seeking debarment and shall identify a recommended debarment period.
- b. The Purchasing Director shall review the complaint, verify whether it is compliant with the provision of this Purchasing Ordinance, direct any appropriate changes and forward the complaint to the contractor.
- c. The contractor shall review the complaint and shall provide a written response (with supporting documentation) to each allegation. The response shall be provided to the Purchasing Director within ten (10) business days of receipt of the notice of allegations. In the event that the contractor fails to respond to the complaint within the prescribed time period, the complaint, as forwarded to the contractor, shall become an effective suspension or debarment decision without further appeal.
- d. In the event that the contractor files a timely and complete response to the complaint and the suspension or debarment action is based upon a conviction, judgment or other event(s) where there is no significant dispute over material facts, the Purchasing Director shall determine the period of recommended suspension or debarment on the basis of the undisputed material information set forth or referenced in the complaint, the contractor's reply and the parameters set forth in this section. In the event that the Contractor objects to the Purchasing Director's recommendation, the Contractor shall have a maximum of three business days to file an appeal of the debarment decision with the Purchasing Director. The appeal will be forwarded to and considered by the County Manager, who will review the record compiled by the initiating department and the contractor. Should the County Manager overturn the Purchasing Director's decision; the County Manager shall formally cite the reasons for doing so.

- e. In the event that the contractor files a timely and complete reply to the complaint and where the facts are in dispute, the Purchasing Director will convene a committee (hereinafter referred to as "the committee") consisting of at least three individuals who will review the complaint and the contractor's reply. The County Manager shall formally appoint the committee, which will generally consist of county employees, none of whom shall be a member of the department initiating the complaint. At the discretion of the County Manager, a member from private industry with a particular area of relevant expertise may be appointed to the committee, provided that this member is not a direct or indirect competitor of the firm in question. The Office of the County Attorney shall appoint a representative to attend the hearing. The representative shall not be considered a voting member of the committee, but shall be available to provide legal counsel to the committee as necessary. All members appointed to serve on the debarment committee shall disclose, to the Purchasing Director any actual or prospective conflicts of interest at the time of appointment or at the time in which the member becomes aware of the actual or prospective conflict.
- f. The Purchasing Director shall chair the committee and serve as the Purchasing Department's representative to the committee. The Purchasing Director shall preside over and facilitate the deliberations of the committee as a non-voting member and serve as the County's liaison to the Contractor. All voting committee members are prohibited from having any communication regarding the issue outside the committee deliberations with any of the parties involved in the specific suspension or debarment or their representatives until after the committee decision has been issued or, in the event of an appeal of that decision by the contractor, until the conclusion of the appeal process. All committee deliberations are subject to Section 286.011 Fla. Stat.
- g. Where the material facts are in dispute, the committee shall evaluate the evidence, judge the credibility of witnesses and base its decision upon the preponderance of the evidence. Should the contractor fail to appear at the hearing, the contractor shall be presumed to be unqualified and or non-responsive and shall be subject to suspension or debarment. The committee decision shall be by a majority vote of those voting members in attendance. The committee shall be the sole trier of fact. In the event that the committee decides to impose suspension or debarment, the decision will formally include, but not be strictly limited to the following information:
- 1) The specific reasons for the action;
  - 2) The scope of the suspension or debarment; and
  - 3) The period of suspension or debarment, including the effective and expiration dates.

The committee's decision shall be issued in writing within 20 business days of the conclusion of the hearing unless the committee extends this period for good cause.

- h. The Purchasing Director shall forward the committee's decision to the contractor and affiliates involved. Should the contractor object to the committee's decision, the contractor shall have a maximum of three business days to file an appeal of the decision with the Purchasing Director. The appeal will be forwarded to and considered by the County Manager, who will review the record compiled by the initiating department, the contractor and the committee. Should the County Manager overturn the committee's decision; the County Manager shall formally cite the reasons for doing so.

Final recommendation for debarment shall be approved by the Board.

3. Debarment Period:

- a. The committee shall recommend the period of debarment. The debarment period shall be commensurate with the severity of the cause(s) and approved by the Board.
- b. The committee (having the same or different composition) may recommend to the Board a reduction in the debarment period upon a written request from the contractor to do so, based on one or more of the following reasons:
  - 1) Newly discovered material evidence;
  - 2) A reversal of the conviction, civil judgment or other action upon which the debarment was based;
  - 3) Bona fide change in ownership or management;
  - 4) Elimination of other causes for which the debarment was imposed; or
  - 5) Other reasons that the committee might deem appropriate.

The contractor's request shall be submitted to the Purchasing Director in writing and shall be based on one or more of the aforementioned reasons.

- c. The decision of the Board regarding a reduction of the debarment period is final and not subject to appeal.

4. The Effects of Debarment:

- a. Debarred contractors are excluded from receiving County contracts. Departments shall not solicit offers from, award contracts to, or consent to subcontractors with debarred contractors, unless the County Manager in consultation with the Board Chair or Vice-Chair determines that emergency or single source conditions exist and grants written approval for such actions. Debarred contractors are excluded from conducting business with the County as agents, representatives, subcontractors or partners of other contractors.



- b. The Purchasing Department shall notify all Board departments of the final debarment decision and the effects of that decision with regard to conducting business with the debarred entity(ies) during the debarment period.
5. Continuation of Current Contracts:
- a. Departments may not renew or otherwise extend the duration of current contracts with debarred contractors in place at the time of the debarment unless the Board determines that it is in the best interests of the County to allow the contractor to continue or finish the work within an additional, limited period of time.
  - b. Debarment shall constitute grounds for terminating an open agreement with a contractor. However, the contract manager may, with Board approval, permit completion of an open contract(s) provided that the debarred contractor has performed in a satisfactory manner to date under the open contract(s) unless otherwise directed by the Purchasing Director.
6. Restrictions on Subcontracting:
- a. When a debarred contractor is proposed as a subcontractor for any subcontract subject to County approval, the department shall not consent to subcontracts with such contractors unless the County Manager in consultation with the Chair or Vice-Chair determines that emergency or single source conditions exist, thus justifying such consent and approves such decision.
  - b. The County shall not be responsible for any increases in contract costs or other expenses incurred by a contractor as a result of rejection of proposed subcontractors pursuant to subsection 6.a provided that the subcontractor was debarred prior to the submission of the applicable bid or proposal offer.
7. The Scope of Debarment: Debarment applies to all officers, Directors, Managers, principals, Purchasing Directors, partners, qualifiers, divisions or other organizational elements of the debarred contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements or commodity/services. The committee's decision includes any existing affiliates of the contractor if they are specifically named and are given written notice of the proposed debarment and an opportunity to respond. Future affiliates of the contractor are subject to the pre-existing terms of the committee's decision.

**SECTION THIRTY: Waiver of Ordinance.**

The Board of County Commissioners shall have the authority to waive any and all Purchasing Ordinance provisions within lawful guidelines and upon formal Board action.

**SECTION THIRTY-ONE: Conflict and Severability.**

In the event this Purchasing Ordinance conflicts with any other ordinance of Collier County or other applicable law, the more restrictive shall apply. If any phrase or portion of the Purchasing Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

**SECTION THIRTY-TWO: Inclusion in the Code of Laws and Ordinances.**

The provisions of this Purchasing Ordinance shall become and be made a part of the Code of Laws and Ordinance of Collier County, Florida. The sections of the Purchasing Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

**SECTION THIRTY-THREE: Effective Date.**

This Purchasing Ordinance shall be effective upon filing with the Department of State.

**PASSED AND DULY ADOPTED** by the Board of County Commissioners of Collier County, Florida, this 10th day of December, 2013.

ATTEST:  
DWIGHT E. BROCK, Clerk

BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

By: *[Signature]*  
Attest as to Chairman's  
signature only.

By: *[Signature]*  
GEORGIA A. HILLER, ESQ.  
CHAIRWOMAN

Approved as to form and legality:

*[Signature]*  
Jeffrey A. Klatzkow  
County Attorney

This ordinance filed with the  
Secretary of State's Office the  
10th day of December, 2013  
and acknowledgement of that  
filing received this 16th day  
of December, 2013  
By: *[Signature]*  
Deputy Clerk