

PROPOSED

RESOLUTION NO. 2018-

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE PROCUREMENT CODE, AMENDING VARIOUS SECTIONS OF CHAPTER 21 OF THE BROWARD COUNTY ADMINISTRATIVE CODE ("ADMINISTRATIVE CODE") RELATING TO BID PROTESTS AND HEARINGS, COMMITTEE-BASED PROCUREMENTS, CONTRACT AND BID AWARD AUTHORITY, NEGOTIATIONS, AND DEBARMENT; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE ADMINISTRATIVE CODE, AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Broward County desires to amend the Procurement Code of Broward County, Chapter 21 of the Broward County Administrative Code, relating to bid protests and hearings, committee-based procurement procedures, contract and bid award authority, negotiations, and debarment, NOW, THEREFORE,

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

Section 1. Section 21.3 of the Broward County Administrative Code is hereby amended to read as follows:

21.3. Purposes, Rules of Construction.

a. *Interpretation.* This Procurement Code of Broward County ("Code") shall be construed and applied to promote its underlying purposes and policies.

...

1 Section 2. Section 21.4 of the Broward County Administrative Code is hereby
2 amended to read as follows:

3 **21.4. Supplementary General Principles of Law Applicable.**

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

12
13 Section 3. Section 21.14 of the Broward County Administrative Code is hereby
14 amended to read as follows:

15 **21.14. Authority of the Director of Purchasing.**

16 . . .

17 c. *Duties.* Except as otherwise specifically provided in this Code, the Director
18 of Purchasing shall, in accordance with the regulations promulgated:

19 . . .

20 6. Execute all contracts and amendments within the Director's approval
21 authority and agreements delegated by the Board of ~~County~~
22 ~~Commissioners~~ for the Director of Purchasing's execution. ~~The total~~
23 ~~amount of an amendment or amendments to a contract executed under this~~
24 ~~paragraph may not exceed \$400,000. An amendment must be signed by~~

1 the appropriate award authority based on the total amount of the underlying
2 agreement and all amendments, including any proposed amendment(s)
3 pending execution by an appropriate award authority.

4 . . .

5 d. Execution Authority. In addition to any express delegation of power by the
6 Board in connection with a particular procurement or expressly stated in a contract
7 approved by the Board, the Director of Purchasing is authorized to execute the following
8 contracts and amendments, to exercise the following extensions to and renewals of
9 contracts, and to award the following bids, regardless of the duration of the contracts,
10 bids, amendments, extensions, or renewals (the "Director's Execution Authority"):

- 11 1. Contracts in an amount not exceeding \$500,000;
- 12 2. Amendments, provided the cumulative exercise of the Director of
13 Purchasing's authority under this section with respect to that contract does
14 not exceed \$500,000;
- 15 3. Extensions or renewals, provided the cumulative exercise of the Director of
16 Purchasing's authority under this section with respect to that contract does
17 not exceed \$500,000; and
- 18 4. Award bids up to \$500,000, provided that more than one bidder has
19 submitted a response; and award bids in any amount over \$500,000,
20 provided that no bidder has been determined to be nonresponsive or
21 nonresponsive, no protests have been filed, and more than one bidder has
22 submitted a response, and further provided that no Commissioner has
23 expressed an objection within five (5) days after receiving notice of intended
24 award from the Purchasing Division.

1 All contracts, amendments, extensions, renewals, and bids approved by the Director of
2 Purchasing pursuant to this section that are above the mandatory bid amount and not
3 subject to a delegation of authority pursuant to Section 21.15 may be executed by the
4 Director of Purchasing. However, any exercise of the Director's Execution Authority
5 above the amount of \$250,000/\$400,000/\$500,000, as calculated above, shall be
6 executed jointly by the Director of Purchasing and the County Administrator.

7
8 Section 4. Section 21.31 of the Broward County Administrative Code is hereby
9 amended to read as follows:

10 **21.31. Award.**

11 a. *Award Authority.*

12 . . .

13 4. All contracts over ~~\$250,000~~ \$500,000 ~~per annum, regardless of the number~~
14 ~~of years of the contracts,~~ shall be awarded by the Board of County
15 Commissioners, except as otherwise provided herein. ~~All awards \$250,000~~
16 ~~or less per annum and for a current known requirement of \$250,000 or less~~
17 ~~shall be made by the Director of Purchasing. The current known~~
18 ~~requirements shall be used to establish the award authority, and if actual~~
19 ~~usage is different, the award authority shall be adjusted at the next~~
20 ~~opportunity for rebidding. Any contract, exceeding \$400,000 on a multi-year~~
21 ~~basis with the same vendor, is to be awarded by the Board of County~~
22 ~~Commissioners. The Director of Purchasing may renew such contracts for~~
23 ~~as many renewal terms as contained in the contract, provided any single~~
24 ~~annual renewal amount or multi-year renewal amount does not exceed the~~

1 ~~award authority of the Director of Purchasing, unless authorized by the~~
2 ~~Board.~~ The Director of Purchasing may make any award within the Director
3 of Purchasing's authority as stated in Section 21.14(d). All awards made
4 pursuant to Section 21.36, Procurement from Contracts of Other
5 Governments and Published Catalogs; Section 21.54, Standardization;
6 ~~and or~~ Section 21.135, Cooperative Purchasing; shall be made by the
7 Director of Purchasing, in accordance with those sections cited.

8 . . .

9 ~~9. The Director of Purchasing is authorized to approve and execute~~
10 ~~amendments to contracts, regardless of the awarding authority, if the total~~
11 ~~amount of the amendment does not exceed the Director of Purchasing's~~
12 ~~award authority based upon the total value of all amendments.~~

13 9. The Director of Purchasing shall provide monthly reports to the County
14 Administrator, County Auditor, and the Board on all bids awarded by the
15 Director of Purchasing.

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

17 1. All contracts awarded by the Board ~~of County Commissioners~~ shall be
18 signed by the Mayor, Vice-Mayor, or as otherwise ~~provided~~ authorized
19 herein or by action of the Board.

20 2. The County Administrator or the Director of Purchasing shall have the ~~ability~~
21 authority to sign on behalf of the Board any ~~agreement or contract or~~
22 amendment for any procurement, whether included or excluded under this
23 Code, ~~\$250,000 or less per annum, excluding Professional Services which~~
24 ~~is limited to \$100,000 or less per annum. All contracts awarded under this~~

1 ~~section shall be signed by the County Administrator or the Director of~~
2 ~~Purchasing. Any contract, exceeding \$400,000 for goods and/or general~~
3 ~~services or exceeding \$200,000 for professional services, on a multi-year~~
4 ~~basis with the same vendor, is to be awarded by the Board of County~~
5 ~~Commissioners~~ within the Director of Purchasing's authority stated in
6 Section 21.14(d) (subject to any joint signature requirement).

7 ...

8
9 Section 5. Section 21.34 of the Broward County Administrative Code is hereby
10 amended to read as follows:

11 **21.34. Sole Source Procurement.**

12 A contract within the award authority of the Director of Purchasing may be awarded
13 for supplies, services, or construction without competition when the Director of
14 Purchasing or the Director's designee, determines in writing there is only one source or
15 one reasonable source for the required supply, service, or construction, to the extent not
16 inconsistent with applicable law, including, but not limited to, Sections 255.20 and
17 287.055, Florida Statutes. A Sole Source Procurement above the award authority of the
18 Director of Purchasing stated in Section 21.14(d) must be approved and awarded by the
19 Board after solicitation of offers in any manner deemed by the Director of Purchasing to
20 be in the best interest of the County ~~by the Director of Purchasing.~~ If it is determined ~~by~~
21 ~~the Director of Purchasing that a sole source procurement must be made by negotiations~~
22 ~~involving complex terms and conditions and requiring a two party agreement, such~~
23 ~~negotiations shall be noticed pursuant to Section 286.011, Florida Statutes, as amended.~~

24
Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
 underscoring type are additions.

1 Section 6. Section 21.47 of the Broward County Administrative Code is hereby
2 amended to read as follows:

3 **21.47. Amendments.**

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

11
12 Section 7. Section 21.83 of the Broward County Administrative Code is hereby
13 amended to read as follows:

14 **21.83. Selection Committee.**

15 a. Each Selection Committee shall be recommended by the Director of
16 Purchasing and appointed by the County Administrator or designee. ~~The appointment of~~
17 ~~the Selection Committee shall occur within one (1) business day after the approval of the~~
18 ~~applicable competitive solicitation.~~ The dates of the shortlisting and ranking meetings
19 shall be established with the appointment of the Committee. After the shortlisting and
20 presentation meeting dates and times are set by the County Administrator, the dates and
21 times shall not be changed unless due to a protest of the solicitation or the Director of
22 Purchasing determines that the dates should be changed either to comply with other
23 requirements of the Procurement Code or if it is in the best interest of the County. The
24 using division shall provide staff to assist the Committee and the Purchasing Agent or

1 Negotiator. The using division shall also provide to the Committee, the Office of the
2 County Attorney, the County Auditor's Office, and, when applicable, the Cultural Division
3 Representative, a copy of the RLI or other solicitation document and a brief, written
4 summary of the project and the project objectives prior to the shortlisting meeting.

5 . . .

6
7 Section 8. Section 21.84 of the Broward County Administrative Code is hereby
8 amended to read as follows:

9 **21.84. Selection Committee and Selection/Evaluation Committee**
10 **Composition.**

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

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

18 . . .

19 e. A majority of the members of the Committee shall constitute a quorum,
20 except in no event shall a quorum be less fewer than three (3) members. Once a quorum
21 is established, a Committee meeting may start without regard to the absence of any other
22 Committee members. Except as provided in this paragraph, any member of the
23 Committee may attend the meeting and may vote by audio interactive telephone
24 conference, ~~including voting~~; however, no one attending the meeting by audio interactive

1 telephone conference may be counted as for purposes of establishing a quorum. Each
2 voting member of a Committee must be physically present and remain physically present
3 at the RLI presentation/ranking meeting, the RFP evaluation meeting, and any
4 combination meeting that includes a ranking or evaluation, unless a recess is called. Any
5 member of a Committee that is absent for more than five (5) minutes from the RLI
6 presentation/ranking meeting, the RFP evaluation meeting, or any combination meeting
7 that includes a ranking or evaluation ~~for more than five (5) minutes~~ is automatically
8 removed from the Committee and is not allowed to vote. The five-minute requirement
9 begins when the Committee Chair announces the time and starts the meeting. The five-
10 minute requirement ends when the meeting is adjourned. Automatic removal shall not
11 affect the quorum for the particular meeting at which removal occurred if a quorum was
12 present at the start of the meeting. The Chair of the Committee is responsible for notifying
13 a removed member of his or her status. In accordance with Section 286.0113(2)(b),
14 Florida Statutes, that portion of the Committee meeting at which a vendor makes an oral
15 presentation or answers questions shall be closed to the public, including competing
16 vendors. The portion of the Committee meeting that is closed to the public shall be video
17 recorded. Within three (3) business days after the Committee meeting, the video
18 recording shall be posted, along with the Final Recommendation of Ranking, on the
19 Purchasing Division's website, absent circumstances or conditions beyond the
20 reasonable control of the Purchasing Division, including, but not limited to, technical
21 difficulties. The applicable protest or objection period shall not commence until the video
22 recording is posted on the Purchasing Division's website.

23 . . .

24

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1 h. After the Final Recommendation of Ranking is posted, if a protest or
2 objection has been filed, the Director of Purchasing shall present to the Board the
3 ranking/evaluation for approval. The Board, by majority vote, has the option to either
4 (1) approve the ~~Selection/Evaluation~~ Committee's ranking/evaluation recommendation;
5 (2) reject all submittals; or (3) send the ranking/evaluation back to the
6 ~~Selection/Evaluation~~ Committee to consider new significant information and either ratify
7 the ranking/evaluation or reorder the list. The Board, by super majority vote, has the
8 option to ~~re-rank/re-evaluate~~ rerank/reevaluate the shortlisted firms following
9 presentations to the Board. After the Final Recommendation of Ranking is posted, if no
10 protest or objection has been filed, the County Administrator is authorized to approve all
11 final rankings. However, award of the resulting contract requires formal Board approval
12 unless the contract amount is within the authority delegated to the Director of Purchasing.

13 . . .

14
15 Section 9. Section 21.94 of the Broward County Administrative Code is hereby
16 amended to read as follows:

17 **21.94. Changes to Negotiated Contracts.**

18 . . .

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

23 . . .

24
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1 d. In cases of architectural and engineering ~~non-continuing~~ noncontinuing
2 services contracts for capital construction projects, amendments may be negotiated by
3 the Contract Administrator when the amount is less than \$60,000.00. The Contract
4 Administrator may negotiate amendments more than \$30,000.00 but less than
5 \$60,000.00 only two (2) times in the life of any architectural and engineering services
6 contract for capital construction. In any case, the amendments must be approved by the
7 proper award authority ~~and the approval shall be based upon negotiations conducted in~~
8 ~~accordance with Florida's Sunshine Law by the Purchasing Negotiator or Contract~~
9 ~~Administrator.~~

10 . . .
11

12 Section 10. Section 21.118 of the Broward County Administrative Code is hereby
13 amended to read as follows:

14 **21.118. Authority ~~To~~ Resolve Protested Solicitations and Proposed Awards.**

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

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...

Section 11. Section 21.119 of the Broward County Administrative Code is hereby amended to read as follows:

21.119. Authority To Debar or Suspend.

...

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

...

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

~~10.~~ 11. 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.

...

Section 12. Section 21.120 of the Broward County Administrative Code is hereby amended to read as follows:

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

...

c. *Hearing Procedure.* The procedure for any hearing required by this ~~article~~ Part IX shall be is as follows:

1. The County shall cause to be served upon the person a notice of hearing, stating the time and place of the hearing. The hearing shall be limited to

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three (3) hours for each side. At the discretion of the hearing officer, and upon a showing of good cause, additional time may be allowed in an equal amount for each side. If there is an intervenor, the intervenor will be allowed up to one (1) hour to present its case unless a party cedes additional time from that party's allotted time. The notice of hearing shall be sent by certified mail, return receipt requested, to the mailing address of the vendor.

...

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, Broward County 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~~

1 prior to the scheduled hearing date, the hearing officer may allow local
2 depositions of the parties who have personal knowledge of the protest and
3 who will be unavailable to testify at the hearing. At the discretion of the
4 hearing officer, and upon a showing of good cause, depositions may be
5 allowed in order to present testimony from a witness unavailable to attend
6 the hearing. The hearing officer may grant the motion of any person having
7 standing under Florida law to intervene in the proceedings. The hearing
8 officer must rule upon any preliminary motions or motions to intervene
9 before the commencement of a hearing held under this section. Such
10 motions shall be made at least ten (10) days prior to the date the hearing is
11 scheduled. The motions may be argued at the final hearing or at a motion
12 hearing noticed prior to the date of the final hearing. ~~When all parties are~~
13 ~~represented by counsel, the hearing officer may also allow each party one~~
14 ~~(1) written request for production of documents, on an expedited basis, prior~~
15 ~~to the hearing and may issue subpoenas duces tecum for witnesses to bring~~
16 ~~documents to the hearing.~~ Any motions allowed by this section must be
17 made at least ten (10) days before a hearing is scheduled and served upon
18 all parties; in order to be considered.

19 . . .

20
21 Section 13. SEVERABILITY.

22 If any portion of this Resolution is determined by any court to be invalid, the invalid
23 portion shall be stricken, and such striking shall not affect the validity of the remainder of
24 this Resolution. If any court determines that this Resolution, or any portion hereof, cannot

