Board of County Commissioners
Leon County, Florida

Policy No. 96-1

Title:	Purchasing and Minority, Women and Small Business Enterprise Policy
Date Adopted:	February 7, 2017
Effective Date:	February 7, 2017
Reference:	Chapter 274, Florida Statutes
Policy Superseded:	Policy No. 96-1, "Purchasing Policy"; adopted January 16, 1996; revised November 25, 1997; revised February 24, 1998; revised March 22, 2005; revised December 13, 2005; revised June 13, 2006; revised February 26, 2009; revised October 27, 2009; revised February 9, 2010; revised March 23, 2010; revised October 12, 2010; revised June 14, 2011; revised August 23, 2011; revised November 8, 2011; revised February 14, 2012; revised March 13, 2012; revised February 12, 2013; revised October 29, 2013; revised January 27, 2015

It shall be the policy of the Board of County Commissioners of Leon County, Florida, that Policy No. 96-1, "Purchasing and Minority, Women and Small Business Enterprise Policy," revised by the Board of County Commissioners on January 27, 2015 be amended and a revised policy is hereby adopted in its place, to wit:

BOARD OF COUNTY COMMISSIONERS
LEON COUNTY

Purchasing and Minority, Women and Small Business Enterprise Policy

LEON COUNTY BOARD OF COUNTY COMMISSIONERS
Purchasing and Minority, Women and Small Business Enterprise Policy

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Section 1 PURPOSE

This policy is adopted to promote the following purposes:

A. To simplify, clarify, and modernize the procurement practices used by the Leon County Board of County Commissioners.

B. To promote the continued development of professional and equitable procurement policies and practices.

C. To promote public confidence in the purchasing procedures followed by Leon County.

D. To ensure the fair and equitable treatment of all persons who deal with the procurement system of Leon County.

E. To encourage the growth of small and minority businesses through the promotion of an atmosphere conducive to the development and maintenance of small and minority business participation in the County's procurement system.

F. To maximize economy in Leon County procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of Leon County.

G. To provide safeguards for the maintenance of a procurement system of quality and integrity in Leon County.

Section 2 APPLICATION OF POLICY

A. Contracts: This policy shall apply to contracts/agreements solicited or entered into after the effective date of this policy or subsequent amendments or revisions, unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

B. Activities: This policy shall apply to the purchase/procurement of all materials, supplies, services, construction and equipment except as herein specifically exempted.

C. Exemptions from the Purchasing Policy. The following exemptions do not preclude the County from utilizing competitive procurement practices where possible. The following types of purchasing activities shall be exempt from the purchasing policy except as noted:

1. All heavy equipment repairs shall be exempted from the competitive sealed bid requirements. The Fleet Management Director or designee shall solicit and evaluate quotations and make a recommendation for award. The Purchasing Director shall review the quotations and the recommendation for award and award of the bid shall be made by the appropriate authority as provided in Section 5.0.

2. All purchases of services from a utility whose rates are determined and controlled by the Public Service Commission or other governmental authority, including but not limited to electricity, water, sewer, telephone, and cable television services.

3. All supplies, materials, equipment, or services purchased at a price established in any of the authorized forms of state contracts of the State of Florida Department of Management Services, Division of Purchasing; or under the terms and conditions of a cooperative purchasing agreement or term contract by other governmental units.

4. All supplies, and materials, equipment, construction, or services purchased from another unit of government not otherwise limited or prohibited by law.

5. Service/Maintenance Contracts: Continuing service and/or maintenance contracts that are initially awarded by the Board as a part of product acquisition/installation to a vendor who is the manufacturer, developer, or who is the authorized service agent thereof and for which funds are

annually appropriated in the budget are exempt from further competitive requirements of this policy. Examples are software/hardware maintenance, building systems maintenance, security systems, etc.)

6. Real property, real estate brokerage, options of title or abstracts of title for real property, title insurance for real property, and other related costs of acquisition, rental, or sale of real property.

7. All purchases of used equipment having a value of $20,000 or less; however, each such purchase shall be supported by one equipment appraisal report from the vendor.

8. All purchases of used equipment having a value greater than $20,000 and less than $100,000; however, each such purchase shall be supported by two independent equipment appraisal reports.

9. Library Media and Materials. The purchase of library books, education and/or personnel texts, textbooks, printed instructional materials, reference books, periodicals, databases, indexes, pre-recorded library media materials, e.g. audio and video cassettes, film strips, films, sound recordings, computer software, etc., and printed library cards that are to be a part of the library collection are exempt.

10. Grants (Direct Payment) by the County and social services (e.g. burials, reimbursable emergency assistance payments to approved social service agencies, down payment assistance, temporary housing relocation expenses and indigent medical and tubercular care patient services).

11. Advertisements (except Delinquent Tax Notices).

12. Training Media and Services. When such materials or services are available only from the producer, publisher, owner of the copyright or patent, educational institution or training service provider, which developed the training program, the purchase, is exempt from competitive requirements. Approval thresholds in Section 5.0 shall apply.

13. Software. Upgrades, software modification services by the copyright holder, and related software enhancements to installed software purchased through competitive means are exempt. The purchase of new software packages or systems shall follow the thresholds and procedures of the policy to ensure competitive selection.

14. Corporate and media sponsorship agreements up to the formal bid threshold in Section 5.0.

15. Licensed health professionals, e.g., Doctors, Nurses, Veterinarians who provide service directly to patients.

16. Training and educational courses, contracts between the County and governmental entities or nonprofit corporations, memberships, publications, meeting rooms, and hotels when any of the procurements listed previously are below the formal bid threshold in Section 5.0.

17. Lectures by individuals.

18. Artistic services, works of art for public places, and art design and conservation services.

19. Continuing education events or programs.

20. Services of legal counsel authorized by the Office of the County Attorney, including, but not limited to, expert witnesses, conflict counsel, and other services required by the Office of the County Attorney.

21. Travel arrangements and expenses. (Reference Travel Policy)

Section 3 DEFINITIONS

A. The following terms defined in this section shall have the meanings set forth below whenever they appear in this policy:

1. "Addendum" is a written document used to expand or more fully explain the terms of a bid instrument (Invitation to Bid or Request for Proposals). An addendum is not to be confused with a contract "amendment."

2. "Agreement" means all types of Leon County agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, materials, equipment, or construction.

3. "Blanket Purchase Order" means a purchase order issued to a vendor for an amount not to exceed the face value of the purchase order. A blanket purchase order is for the procurement of commodities or services no single item of which shall exceed the threshold for small purchases unless the appropriate method of procurement was used to generate the Blanket Purchase Order.

4. "Board" means the Board of County Commissioners of Leon County, Florida.

5. "Brand Name or Equivalent Specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the County requirements, and which provides for the submission of equivalent products.

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

7. "Change Order" means a written order amending the scope of, or correcting errors, omissions, or discrepancies in a contract or purchase order.

8. "Commodity" means a product that the County may contract for or purchase for the use and benefit of the County. A specific item, it is different from the rendering of time and effort by a provider.

9. "Competitive Sealed Bidding" (Invitation for Bid) means a written solicitation for sealed competitive bids used for the procurement of a commodity, group of commodities, or services valued more than the threshold for this category. The invitation for bids is used when the County is capable of specifically defining the scope of work for which a contractual service is required or when the County is capable of establishing precise specifications defining the actual commodity or group of commodities required.

10. "Confirming Order" means a purchase order restating the same terms originally placed orally or in writing other than a purchase order.

11. "Construction" means the process of building, attaining, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property. It does not include routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

12. "Contract" means all types of Leon County agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, materials, equipment, or construction and which name the terms and obligations of the business transaction.

13. "Contract amendment or modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

14. "Contractor" means any person having a contract with Leon County (not to include employment contracts).

15. "Contractual Services" means the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged there under; and professional, technical, and social services.

16. "Contractual Services Contract" is a contract for a contractor's time and effort rather than the furnishing of specific commodities. Satisfactory completion of the service and/or a specified period of time or date completes such contract.

17. "Cooperative Purchasing" is procurement conducted by, or on behalf of, more than one public procurement unit.

18. "Cost Analysis" is the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

19. "Data" means recorded information, regardless of form or characteristic.

20. "Definite Quantity Contract" is a contract whereby the contractor(s) agrees to furnish a specific quantity of an item or items at a specified price and time to specified locations. Delivery by the vendor and acceptance of the specific quantity by the County completes such contract.

21. "Designee" means a duly authorized representative of a person holding a superior position.

22. "Emergency" means when there exists a threat to public health, welfare, or safety; natural or unnatural, unexpected events; accidents; or loss to the County under emergency conditions which shall be considered to mean those situations where the operation of a department or division would be seriously impaired if immediate action were not taken.

23. "Emergency Purchase" is a purchase necessitated by a sudden unexpected turn of events (e.g., acts of God, riots, fires, floods, accidents or any circumstances or cause beyond the control of the agency in the normal conduct of its business) where the delay incident to competitive bidding would be detrimental to the interests of the County.

24. "Employee" means an individual drawing a salary from Leon County, whether elected or non-elected. For the purposes of this policy, it also means that any non-compensated individual performing personal services for Leon County is to be governed by these rules.

25. "Established Catalog Price" is the price included in a catalog, price list, schedule, or other form that:
    a. is regularly maintained by a manufacturer or contractor;
    b. is either published or otherwise available for inspection by customers; and
    c. states prices at which sales are currently or were last made to a significant number of any category of buyers or those buyers constituting the general buying public for the supplies or services involved.

26. "Field Purchase Order" means the procurement of commodities or services through the issuance of a purchase order by a department or division head under procedures established by the Purchasing Division and with a value within the thresholds set for this category. Field Purchase orders do not require quotes, bids, or public notice prior to issuance.

27. "Field Quotes" is the procurement procedure used by the operating department or divisions to purchase commodities or contractual services with a value within the threshold amounts set for this category and are conducted by the department or division.

28. "f.o.b. or FOB (free on board)" is a term used in conjunction with an identified physical location to determine the responsibility and basis for payment of freight charges, and the point at which title for the shipment passes from seller to buyer. Commonly used deliveries are:

    a) FOB Destination. A shipment to be delivered to a destination designated by the buyer and the point at which buyer accepts title.
    b) FOB Shipping Point (Origin). A shipment is to be delivered to the buyer with passage of title, on board the indicated conveyance or carrier at the contractor's designated facility.

29. "Gratuity" is a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, inuring to the benefit of an employee, unless consideration of substantially equal or greater value is given by the employee.

30. "Informal Sealed Bid is a written solicitation method used by the County for securing prices and selecting a provider of commodities or services with a value within the threshold for this category

31. Intended Decision means a written notice that states the firm or firms to whom the County intends to award a contract resulting from a solicitation and which establishes the period in which a notice of intent to protest may be timely filed. The Intended Decision is posted on the County website and on the Public Notice board in the Purchasing Division.

32. Invitation for Bid (Competitive Sealed Bidding) means a written solicitation for sealed competitive bids used for the procurement of a commodity, group of commodities, or services valued more than the threshold for this category. The invitation for bids is used when the County is capable of specifically defining the scope of work for which a contractual service is required or when the County is capable of establishing precise specifications defining the actual commodity or group of commodities required.

33. “Invitation to Negotiate” means a written solicitation that calls for responses to select one or more persons or business entities with which to commence negotiations for the procurement of commodities or contractual services.

34. "Joint Venture" means:
    a) a combination of contractors performing a specific job in which business enterprises participate and share a percentage of the net profit or loss; or
    b) a joint business association of a minority individual(s)/firm(s) as defined herein, and a non-minority individual(s)/firm(s) to carry out a single business enterprise for which purpose the individuals/firms combine their property, money, efforts, skills and/or knowledge.

35. “Local Business” means a business which:

    a) Has had a fixed office or distribution point located in and having a street address within Leon, Gadsden, Wakulla, or Jefferson County for at least six months immediately prior to the issuance of the request for competitive bids or request for proposals by the county; and
    b) Holds any business license required by Leon County, and, if applicable, the City of Tallahassee; and
    c) Is the principal offeror who is a single offeror; a business that is the prime contractor and not a subcontractor; or a partner or joint venturer submitting an offer in conjunction with other businesses.

36. "Manufacturer" means a person or firm engaged in the process of making, fabricating, constructing, forming, or assembling a product(s) from raw, unfinished, semi-finished, finished, or recycled materials through a direct contract/agreement on behalf of the general contractor.

37. "Option to Renew" means a contract clause that allows a party to reinstate the contract for an additional term.

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

39. "Pre-Bid Conference" (or Pre-Proposal Conference) means a meeting held with prospective bidders prior to solicitation of or the date for receipt of bids or proposals, to recognize state of the art limits, technical aspects, specifications, and standards relative to the subject, and to elicit expertise and bidders' interest in submitting a bid or pursuing the task.

40. “Procurement Award” is an award of a contract for goods or services resulting from a solicitation through action by the Board of County Commissioners in a public meeting.

41. "Professional Services" means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined by the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered land surveyor in connection with his professional employment or practice.

42. "Purchase Order" means that document used by Leon County to request that a contract be entered into for a specified need, and may include, but not be limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, payment terms, and other specifications.

43. "Purchasing" means buying, procuring, renting, leasing, or otherwise acquiring any materials, supplies, services, construction, or equipment. It also includes all functions that pertain to the obtaining of any material, supplies, services, construction, and equipment, including description of specifications and requirements, selection and solicitation of resources, preparation, and award of contract.

44. "Purchasing Director" means the Leon County employee duly authorized to enter into and administer contracts and make written determinations with respect thereto under the terms of the purchasing policies of the Board of County Commissioners.

45. "Purchasing Quotes" is the procedure used to purchase commodities or contractual services wherein the Purchasing Director or Purchasing Agents obtain either written or oral quotations from two or more vendors for purchases within the threshold amounts set for this category.

46. "Recycled Content" means materials that have been recycled and are contained in the products or materials to be procured, including, but not limited to, paper, plastic, aluminum, glass, and composted materials. The term does not include internally generated scrap that is commonly used in industrial or manufacturing processes or waste or scrap purchased from another manufacturer who manufactures the same or a closely related product.

47. "Regulation" means a statement by the Board of County Commissioners having general or particular applicability and future effect, designed to implement, interpret, or prescribe law, policy, or practice.

48. “Request for Information” means a written or electronically posted request to vendors for information concerning commodities or contractual services. Responses to these requests are not offers and may not be accepted to form a binding contract.

49. "Request for Proposals" (RFP) means a written solicitation for sealed proposals with the title, date, and hour of public opening designated. The request for proposals may be used when the County is unable to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required, and when the County is requesting that a qualified offeror propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.

50. “Request for a Quote” means a solicitation that calls for pricing information for purposes of competitively selecting and procuring commodities and contractual services from qualified or registered vendors.

51. "Responsible bidder or offeror" means a person who has the capability, in all respects, to perform fully the contract requirements, and the integrity and reliability, which will assure good faith performance.

52. "Responsive bidder" means a person who has submitted a bid, which conforms in all material respects to the Invitation to Bid or the Request for Proposals.

53. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than those which is not defined as supplies and which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

54. "Small Purchases" means the procurement of commodities or services with a value within the thresholds set for this category without the requirement of quotes, bids, or public notice under procedures established by the Purchasing Division.

55. "Sole (Single) Source Purchases" means the purchase of a commodity, service, equipment, or construction item(s) from one available practical source of supply. A Sole (single) Source may be declared such by the Board of County Commissioners for reasons acceptable to it.

56. "Specification" means any description of the physical or functional characteristics of the nature of a material, supply, service, construction, or equipment item. It may include a description of any requirement for inspection, testing, recycled, or degradable materials content, or preparing a material, supply, service, construction, or equipment item for delivery.

57. "Supplier" means a person or firm who engages in the selling of materials and supplies to contractors, subcontractors, and/or manufacturers for the purpose of constructing, repairing, altering, remodeling, adding to or subtracting from or improving any building, structure, or property through a direct contract/agreement on behalf of the general contractor.

58. “Tangible Personal Property” is defined as property which has an original acquisition cost of $750 or more; is not consumed in use and has a useful life of one year or more after initial acquisition; is not fixed in place and not an integral part of a structure or facility; and is not an integral part or component of another piece of equipment.

59. "Term Contract" means indefinite quantity contract whereby a contractor(s) agrees to furnish an item or items during a prescribed period of time (such as 3, 6, 9, 12 months or a specific date). The specified period of time or date completes such contract.60. "Tie (Identical) Bid" is when two or more bids are equal with respect to price and it appears that the quality and service offered by the vendors are otherwise comparable.

Section 4 AUTHORITY OF PURCHASING DIRECTOR

A. The Purchasing Director shall serve as the central purchasing officer of Leon County.

B. The Purchasing Director shall develop and administer operational procedures implementing this policy and for governing the internal functions of the Division of Purchasing.

C. Except as otherwise specifically provided in this policy, the Purchasing Director, or his/her designee, shall, in accordance with regulations promulgated by the Board of County Commissioners:

1. Purchase or supervise the purchase of all supplies, services, materials, equipment, and construction services defined within the scope of this policy.
2. Operate a central warehouse for the purchasing, in bulk, of items that may be more economically bought and distributed than when purchased on an individual basis; and, to provide facilities for storage of critically needed supplies.
3. Administer the County Purchasing Card Program.
4. Administer the Property Control Program.

D. Upon the prior approval of the County Administrator or designee, the Purchasing Director may delegate authority to designee(s) as allowed by law or rule.

E. The Purchasing Director shall assist the Minority Business Enterprise Coordinator, implement, monitor, and enforce the County's Minority Business Enterprise program policy.

Section 5 PURCHASING CATEGORIES; THRESHOLD AMOUNTS

Table 1 – Purchasing Process Thresholds	
Procurement Method	**Threshold**
Petty Cash/Reimbursement (Section 5.01)	Not to exceed $100
Field Purchase Order (Section 5.02)	$1 to $500
Small Purchase Procedures (Section 5.03) Warehouse Operations (Section 5.031)	$1 to $1,000 $1 to $5,000
Blanket Purchase Orders (Section 5.04) Non-contractual Basis Contractual Basis	 not to exceed $5,000 not to exceed annual contract value
Field Quotes (Section 5.05)	$1,000 to $5,000
Purchasing Quotes (Section 5.06)	$5,000.01 to $50,000
Bid - Informal Bid Process – Standard (Section 5.07)	$50,000.01 to $100,000
Bid – Informal Bid Process for Tenant Renovations/Improvements to County Space Leased by Private Entities (Section 5.07.1)	$50,000.01 to $200,000
Bid - Competitive Sealed Bids (Section 5.08)	$100,000.01 and above
RFP - Competitive Sealed Proposals (Sections 5.09 and 5.09.1)	Purchasing Director –Authorized to Release RFPs Expected to Result in Costs No Greater than $100,000; County Administrator Authorized to release all RFPs

Table 2 - Contract Award and Signature Authority Thresholds	
Individual	**Threshold[1]**
Purchasing Director	*Procurement Agreements up to $100,000
County Administrator	*Procurement Agreements greater than $100,000 and no greater than $250,000
Board of County Commissioners	*Procurement Agreements greater than $250,000
[1] Term contracts will be awarded based upon the value of the initial term of the contract. *All contracts will be in a form approved by the County Attorney's Office prior to execution.	

Section 5.01 PETTY CASH/REIMBURSEMENT

A. Petty cash funds shall be established and administered under the financial policies of the Board.

B. Purchases from any petty cash fund or the reimbursement for a purchase shall be governed by the following requirements:

1. No purchase of any single item from any petty cash fund or for reimbursement shall exceed the authorized dollar limit for petty cash/reimbursements in Section 5.

2. Reimbursement for employee travel expenses from a petty cash fund shall not be allowed, except for local parking or toll costs.

3. Funds contained within a petty cash fund shall not be expended for the payment of salaries.
4. Expenditures from a petty cash fund or personal funds shall be reimbursed, provided:
   a) They are supported by itemized vouchers, invoices, or receipts signed by the division or department head or designee.
   b) They qualify as a proper public purpose.
   c) They are expenses included within the approved annual budget of the division or department.

Section 5.02 FIELD PURCHASE ORDERS

A. Field purchase orders shall be used for purchase of small, sundry items, which cost not more than the threshold authorized for field purchase orders in Section 5. Field purchase orders shall be used for a single or aggregate purchase, but only for a single transaction. Employees are encouraged to seek out and utilize certified minority and women-owned business enterprises in these purchases.

B. Field purchase orders shall not be combined to purchase any item, which costs more than the approved threshold limit and shall not be used in the manner of or in lieu of a blanket purchase order.

C. Field purchase orders shall be issued and authorized only by department and division heads.

Section 5.03 SMALL PURCHASES

The purchase of commodities, equipment, and services, which cost less than the threshold authorized in Section 5, does not require solicitation of quotes or bids. Small purchases shall be authorized by Department or Division heads or their designees. Employees are encouraged to seek out and utilize certified minority and women-owned business enterprises in these purchases.

Section 5.03.1 WAREHOUSE OPERATIONS

The purchase of commodities, materials, and equipment for warehouse inventory, which cost less than the threshold authorized in Section 5, does not require solicitation of quotes or bids. Use of economic indices, review of costs, market trends, and/or use of periodic quotations shall be used by staff to assure cost effective purchases. Warehouse employees are encouraged to seek out and utilize certified minority and women-owned business enterprises in these purchases

Section 5.04 BLANKET PURCHASE ORDERS

Blanket Purchase Orders of either type listed below shall not be used to purchase any tangible personal property item. Tangible personal property items shall be listed as individual line items on a purchase order.

A. Non-contractual Basis - All purchases made with a non-contractual blanket purchase order shall follow the thresholds and requirements for competitive selection. No purchase order shall be issued for an amount greater than the limit established for a non-contractual blanket purchase order in Section 5 of this policy for the purchase of goods or services not under a contractual arrangement authorized under this purchasing policy or approved by the Board.

B. Contractual Basis - No purchase order shall be issued for an amount greater than the limit established for a contractual blanket purchase order in Section 5 of this policy for the purchase of goods or services unless approved by the Board.

Section 5.05 FIELD QUOTES

The purchase of goods and services, which cost within the range authorized for field quotes in Section 5, shall require competitive quotations from three or more vendors. The quotations may be obtained by the Department/Divisions. Employees are encouraged to seek out and secure at least one of the three quotes from certified minority and women-owned business enterprises. The Purchasing Director shall review the quotations and make the award or require additional quotations prior to award.

Section 5.06 PURCHASING QUOTES

The purchase of goods and services, which cost within the range authorized for purchasing quotes in Section 5, shall require competitive quotations from three or more vendors. The quotations may be obtained by the operating department/division or the Purchasing Division and shall be reviewed and awarded by the Purchasing Director. Quotes must be on company letterhead, quote forms, or in a similar format with a date and signature of an authorized representative of the vendor. Employees are encouraged to seek out and secure at least one of the three quotes from certified minority and women-owned business enterprises.

Section 5.07 INFORMAL BIDS

For purchases within the cost range authorized for informal bids in Section 5, the Purchasing Director shall secure, whenever possible, a minimum of three written quotations, which shall be the result of written specifications transmitted by mail, by electronic format, or by facsimile. When such quotations are received by facsimile, the purchasing agent will immediately seal and label the quotations until the time set for opening bids. In those instances where the securing of three quotations is not practicable, the Purchasing Director shall provide written justification of such. The Purchasing Division shall seek out and encourage participation in the bid from certified small or certified minority and women-owned business enterprises, when available. The quotations shall be reviewed and a written recommendation of award shall be prepared for review and action.

Section 5.07.1 INFORMAL BIDS FOR TENANT RENOVATIONS AND IMPROVEMENTS FOR LEASED SPACE

For purchases for tenant renovations/improvements for County-owned spaces leased to private entities and within the cost range authorized for informal bids for lease space in Section 5, all procedures in Section 5.07 shall be followed:

Section 5.08 COMPETITIVE SEALED BIDDING

A. Conditions for Use. All contracts for purchases of a single item or aggregate for the proposed term of service in excess of the established base amount for competitive sealed bidding in Section 5 shall be awarded on the basis of sealed competitive bidding, except as provided in Section 5.09, Competitive Sealed Proposals.

B. Invitation to Bid. An invitation to bid shall be issued and shall include specifications, all contractual terms and conditions, and the place, date, and time for opening or submittal. All interpretations or corrections shall be issued as addenda. The County shall not be responsible for oral clarifications or representations.

   1. Alternate(s). Alternate bids will not be considered unless authorized by and defined in the invitation to bid or addenda thereto.

   2. Approved Equivalents. The County reserves the right to determine acceptance of item(s) as an approved equivalent. Bids, which do not comply with, stated requirements for equivalents in the bid conditions are subject to rejection. The procedure for acceptance of equivalents shall be included in the invitation to bid or addenda thereto.

   3. If less than two responsive bids, proposals, or replies for commodity or contractual services purchases are received, the Purchasing Director may negotiate on the best terms and conditions. The Purchasing Director shall document the reasons that such action is in the best interest of the County in lieu of resoliciting competitive sealed bids, proposals, or replies. The Purchasing Director shall report all such actions to the County Administrator or designee prior to final award of any contract resulting from the negotiations.

C. Public Notice.

1. The solicitation of competitive bids or proposals for any County construction project that is projected to cost more than $200,000 shall be publicly advertised at least once in a newspaper of general circulation in the County at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference. The solicitation of competitive bids or proposals for any County construction project that is projected to cost more than $500,000 shall be publicly advertised at least once in a newspaper of general circulation in the County at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference. Bids or proposals shall be received and opened at the location, date, and time established in the bid or proposal advertisement. In cases of emergency, the procedures required in this section may be altered by the County in any manner that is reasonable under the emergency circumstances.

   The solicitation of competitive bids for work on roads shall be publicly advertised in a newspaper of general circulation in the county at least once each week for two consecutive weeks.

2. Changes to Public Notice. If the location, date, or time of the bid opening changes, written notice of the change shall be given in the form of an addendum, as soon as practicable after the change is made and posted on the Purchasing Division website

3. Each invitation to bid, request for proposals, request for qualifications, invitation to negotiate, or other procurement solicitation which is anticipated to include travel expenses by authorized persons as defined in the Leon County Travel Policy shall include the following notice:
   Consultant travel which is not covered within the scope of the consultant's contract and which is billed separately to the County on a cost reimbursement basis must receive prior approval and will be reimbursed in accordance with the Leon County Travel Policy. Travel expenses shall be limited to those expenses necessarily incurred in the performance of a public purpose authorized by law to be performed by the Leon County Board of County Commissioners and must be within limitations described herein and in Ch. 112.06, Florida Statutes. Consultants and contractors, traveling on a cost reimbursement basis, must have their travel authorized by the department head from whose budget the travel expenses will be paid and the County Administrator.

D. Bid Opening. Bids shall be opened publicly. At least one representative from the Division of Purchasing shall open the bids in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and such other relevant information as may be deemed appropriate by the Purchasing Director, together with the name of each bidder, and all witnesses shall be recorded. The record (Tabulation Sheet) and each bid shall be open to public inspection as provided by law.

E. Bid Acceptance and Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include, but not be limited to criteria to determine acceptability such as: inspection, testing, quality, recycled or degradable materials content, workmanship, delivery, and suitability for a particular purpose and/or factors to determine a bidder's level of responsibility such as references, work history, bonding capacity, licensure, certifications, etc. Those criteria that will affect the bid price and that are to be considered in evaluation for award shall be objectively measured, such as discounts, transportation costs, and total or life cycle costs. No criteria may be used in bid evaluation that is not set forth in the Invitation to Bid, in regulations, or in this policy.

F. Bid Agenda Item. The Tabulation Sheet and other bid documents, as necessary, shall be presented to the appropriate department or division head for review and recommendation. The department or division head shall prepare the recommendation in the appropriate format to the awarding authority as prescribed in Section 5.

G. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted where appropriate under the sole discretion of the County. Mistakes discovered before bid opening may be modified or withdrawn upon written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the County or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

1. the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

2. the bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Director and concurred with by the County Administrator.

H. Multi-Step Sealed Bidding.

1. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids or request for proposals may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

2. A multi-step process utilizing pre-qualification of bidders or respondents may be used to ensure that the bidders/respondents have the appropriate licensure, capacity, qualifications, experience, staffing, equipment, bonding, insurance and similar project based criteria to successfully a perform a specific project or service. Those bidders/respondents determined qualified in the pre-qualification will then be eligible to participate in the invitation to bid or request for proposal process for the project or service. The Purchasing Director shall develop and administer operational procedures governing any such pre-qualification process.

I. Award. The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The County reserves the right to waive any informality in bids and to make an award in whole or in part when either or both conditions are in the best interest of Leon County. The contract shall be awarded by purchase order or other written notice. Every procurement of contractual services shall be evidenced by a written agreement.

1. Notice of Intended Decision. The Intended Decision shall be posted on the County website and on the public notice board in the Purchasing Division. This written notice shall state the firm or firms to whom the County intends to award the contract resulting from the solicitation and establishes the 72 consecutive hour period in which a notice of intent to protest may be timely filed.

2. Notice of Right to Protest. Any bid award recommendation may be protested if the recommendation is alleged to be contrary to the County's rules or policies, the solicitation specifications, or law. The standard of proof for such proceedings shall be whether the action is clearly erroneous, contrary to competition, arbitrary or capricious. Such notice of intent of bid protest shall be delivered to the Purchasing Director within 72 consecutive hours after posting of the Notice of Intended Decision of Award (excluding Saturdays, Sundays, and County holidays). Protestor shall file thereafter a formal written bid challenge within 10 calendar days after the date in which the notice of intent of bid protest has been submitted. Failure to timely file a notice of intent of bid protest or failure to timely file a formal written bid protest with the proper bond shall constitute a waiver of all rights provided under the Leon County Purchasing Policy.

J. Cancellation of Invitations for Bids. An invitation for bids or other solicitation may be canceled, or any or all bids may be rejected in whole or in part when it is in the best interests of the County, as determined by the Board. Notice of cancellation shall be provided to all planholders and posted on the County website. The notice shall identify the solicitation, explain the reason for cancellation, and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items.

K. Disqualification of Vendors. For any specific bid, vendors may be disqualified by the Purchasing Director for the following reasons:

1. Failure to materially perform according to contract provisions on prior contracts with the County.

2. Conviction in a court of law of any criminal offense in connection with the conduct of business.

3. Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.

4. Clear and convincing evidence that the vendor has attempted to give a Board employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.

5. Failure to execute a Public Entity Crimes Statement as required by Florida Statutes Chapter 287.133(3)(a).

6. Other reasons deemed appropriate by the Board of County Commissioners.

L. If less than two responsive bids, proposals, or replies for commodity or contractual services purchases are received, or all bids received exceed the available budget identified for the commodity or contractual service, the Purchasing Director may negotiate on the best terms and conditions. The Purchasing Director shall document the reasons that such action is in the best interest of the County in lieu of resoliciting competitive sealed bids, proposals, or replies. The Purchasing Director shall report all such actions to the County Administrator or designee prior to final award of any contract resulting from the negotiations. Award will be made according to the award thresholds in Section 5.

M. Local preference in bidding.

1. In purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures for projects estimated not to exceed $250,000, in which pricing is the major consideration, the County may give a preference to Local Businesses in making such purchase or awarding such contract, as follows:

   a) Individuals or firms which have a home office located within Leon, Gadsden, Wakulla, or Jefferson County, and which meet all of the criteria for a Local Business as defined herein, shall be given a preference in the amount of five percent of the bid price.
   b) Individuals or firms which do not have a home office located within Leon, Gadsden, Wakulla, or Jefferson County, and which meet all of the criteria for a Local Business as defined herein, shall be given a preference in the amount of three percent of the bid price.
   c) The maximum cost differential shall not exceed $20,000.00. Total bid price shall include the base bid and all alternatives or options to the base bids, which are part of the bid and being recommended for award by the appropriate authority.

2. Preference in bidding for construction services estimated to exceed $250,000.

   a) Except where otherwise provided by federal or state law or other funding source restrictions, in the purchasing of, or letting of contracts for procurement of construction services for improvements to real property or existing structures, limited to projects estimated to exceed $250,000, the County may give preference to Local Businesses in the following manner:

i. Under a competitive bid solicitation, when the lowest responsive and responsible bid is submitted by an individual or firm that is not a Local Business, then the local business that submitted the lowest responsive and responsible bid shall be offered the opportunity to perform the work at the lowest bid amount, if that Local Business's bid was not greater than 110 percent of the lowest responsive and responsible bid amount.

ii. All contractual awards issued in accordance with the provisions of Section 5.08(M)(2)(a) shall contain aspirational trade contractor work targets, based on market and economic factors, of 85 percent as follows: The successful individuals or firms shall agree to engage not less than 85 percent of the dollar value of trade contractor work with Local Businesses, unless the successful individuals or firms prove to the County's satisfaction that the trade contractor work is not available locally within the Leon, Gadsden, Wakulla or Jefferson County area. The term "trade contractor" shall mean a subcontractor who contracts with the prime contractor and whose primary activity is performing specific activities (e.g., pouring concrete, masonry, site preparation, framing, carpentry, dry wall installation, electrical, plumbing, painting) in a construction project but is not responsible for the entire project.

b) Section 5.08 (M)(2)(a) shall sunset and stand repealed on January 1, 2016 unless reviewed and saved from repeal through reenactment by the Board.

3. Certification. Any vendor claiming to be a Local Business shall so certify in writing to the purchasing division. The certification shall provide all necessary information to meet the requirements for a Local Business as defined herein. The purchasing agent shall not be required to verify the accuracy of any such certifications, and shall have the sole discretion to determine if a vendor meets the definition of a "Local Business."

4. Waiver. The application of local preference to a particular purchase, contract, or category of contracts for which the County is the awarding authority may be waived upon written recommendation of the County Administrator and approval of the Board. The application of local preference to a particular purchase, contract, or category of contracts below the award authority of the Board may be waived upon written recommendation of the Director of Purchasing and approval of the County Administrator.

(Reference Article IX, Section 2-400, Chapter 2 of the Code of Laws of Leon County, Florida)

Section 5.09 COMPETITIVE SEALED PROPOSALS

Section 5.09.1 PROFESSIONAL ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL, AND LAND SURVEYING SERVICES

A. Purpose. The purpose of this section, and the procedures established hereunder, is to ensure compliance with Section 287.055 Florida Statutes, known as the Consultants Competitive Negotiation Act (CCNA). This act establishes parameters within which the County must select professional services from architects, engineers, landscape architects, surveyors, and mappers. The CCNA requires the County to select these services on a qualitative basis using prescribed criteria prior to any negotiations, which may consider the cost of such services.

B. Public Announcement. It is the policy of the County to publicly announce all requirements for professional architectural, engineering, landscape architectural, land surveying, and mapping services, and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the Purchasing Director may require firms to submit a statement of qualifications, performance data, and other information related to the performance of professional services.

1. Scope of Project Requirements.

   a) For specific projects, the County office requesting the professional services shall submit to the Purchasing Director written project requirements indicating the nature and scope of the professional services needed by the office, including but not limited to the following:
      1) the general purpose of the service or study;
      2) the objectives of the study or service;
      3) estimated period of time needed for the service or the study;
      4) the estimated cost of the service or study;
      5) whether the proposed study or service would or would not duplicate any prior or existing study or service; and
      6) the desired qualifications, listed in order of importance, applicable to the scope and nature of the services requested.

   b) For Continuing Supply Services, the County office requesting the professional services shall submit to the Purchasing Director written project requirements indicating the nature and scope of the professional services needed by the office, including but not limited to the following:
      1) the general purpose of the service or study;
      2) estimated period of time needed for the service or the study;
      3) the estimated cost of the service or study;
      4) the desired qualifications, listed in order of importance, applicable to the scope and nature of the services requested.

2. Review of Project Requirements. The Purchasing Director or his/her designee shall review the scope of project requirements and prepare a draft request for proposals. The draft RFP shall be submitted to the requesting office for consideration and revision, as may be needed, prior to public distribution of the RFP.

3. Distribution of RFP. The Purchasing Director shall distribute the RFP in accord with standard procedures including publication of legal notice, and provide notification of the date and time when such proposals are due. Public notice shall be as provided in Section 5.08 (C).

4. If less than two responsive bids, proposals, or replies for commodity or contractual services purchases are received, the Purchasing Director may negotiate on the best terms and conditions. The Purchasing Director shall document the reasons that such action is in the best interest of the County in lieu of resoliciting competitive sealed bids, proposals, or replies. The Purchasing Director shall report all such actions to the County Administrator or designee prior to final award of any contract resulting from the negotiations.

5. Modification Prohibition. After the publicized submission time and date, any proposal received shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed by the Selection Committee (defined in Section 5.09.1(B) at any point in the process prior to contract negotiations.

6. Reuse of Existing Plans. There shall be no public notice requirements or utilization of the selection process as provided in this section for projects in which the County is able to reuse existing plans from a prior project. However, public notice of any plans, which are intended to be reused at some future time, shall contain a statement that provides that the plans are subject to reuse.

7. Local preference in Requests for Proposals.

   a) In the purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures for which a request for proposals is developed with evaluation criteria, a local preference of the total score may be assigned for a local preference, as follows:

i. Individuals or firms which have a home office located within Leon, Gadsden, Wakulla, or Jefferson County, and which meet all of the criteria for a Local Business as defined herein, shall be given a preference in the amount of five percent.
ii. Individuals or firms which do not have a home office located within Leon, Gadsden, Wakulla, or Jefferson County, and which meet all of the criteria for a Local Business as defined herein, shall be given a preference in the amount of three percent.

b) Certification. Any vendor claiming to be a Local Business shall so certify in writing to the purchasing division. The certification shall provide all necessary information to meet the requirements for a Local Business as defined herein. The purchasing agent shall not be required to verify the accuracy of any such certifications, and shall have the sole discretion to determine if a vendor meets the definition of a "Local Business."

c) Waiver. The application of local preference to a particular purchase, contract, or category of contracts for which the County is the awarding authority may be waived upon written recommendation of the County Administrator and approval of the Board. The application of local preference to a particular purchase, contract, or category of contracts below the award authority of the Board may be waived upon written recommendation of the Director of Purchasing and approval of the County Administrator.

(Reference Article IX, Section 2-400, Chapter 2 of the Code of Laws of Leon County, Florida)

8. Exemptions. This section shall not apply to a professional service contract for a project where the basic construction cost is estimated by the agency to be less than the threshold amount provided in s. 287.055, Florida Statutes, or for a planning or study activity when the fee for professional services is estimated by the agency to be less than the threshold amount provided in s. 287.055, Florida Statutes, or in cases of valid public emergency so certified by the County Administrator. This section shall not apply to any requirement for professional services if a continuing contract is in effect and a determination is made to utilize the continuing contract to obtain such services.

C. CCNA Evaluation Committee Membership.

1. Depending on the expected complexity and expense of the professional services to be contracted, the County Administrator, or his/her designee shall determine whether a three member or five-member selection committee will best serve the needs of the County.

2. Membership of all Evaluation Committees shall be appointed by the County Administrator or his/her designee.

3. Public Meetings. In accordance with Florida Statute 286.011, all Evaluation Committee meetings subsequent to the opening of the solicitation are to be public meetings. The Chairperson shall be responsible to provide the Purchasing Division with all meeting information (date, time, location, and reason for meeting) no less than 96 hours in advance of any scheduled meeting, excluding holidays and weekends. The Purchasing Division will provide reasonable notice of all meetings, no less than 72 hours in advance of such scheduled meeting, excluding holidays and weekends, by posting a Notice of Evaluation Committee Meeting on the public notice bulletin board in the Division offices and on the Leon County website. The Purchasing Director shall develop and implement Evaluation Committee procedures to ensure compliance with public meeting requirements.

4. Contact with the CCNA Evaluation Committee. Members of the CCNA Evaluation Committee are prohibited from discussing a project with any professional or professional firm that may submit a proposal during the procurement process, except in formal committee meetings. The conduct of the business and discussions regarding the proposals before the CCNA Evaluation Committee must be done in the public meetings only.

5. Evaluation of Proposals. Only written responses of statements of qualifications, performance data, and other data received in the purchasing office by the publicized submission time and date shall be evaluated.

a) The initial ranking of proposals is based upon the points given in the Weighted Scoring Sheet utilizing the Evaluation Criteria Matrix. The scores will be provided by the Purchasing and MWSBE Divisions for Local preference and MWBE participation, respectively.

b) Shortlisting. The best-qualified respondents shall be based upon the CCNA Evaluation Committee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed as indicated by the ratings on the Weighted Scoring Sheet. Typically, the top three rated firms, if there are at least three responsive respondents, will be considered as the shortlisted firms, unless the County Administrator, after input and discussion with the CCNA Evaluation Committee, approves adding additional firms to the shortlist.

6. Presentations/Interviews. The CCNA Evaluation Committee may choose to conduct formal presentations/interviews with shortlisted firms prior to final ranking.

7. Final Ranking. The CCNA Evaluation Committee shall utilize the Ordinal Process Rating System to rank the firms The respondents shall be listed in order of preference starting at the top of the list. The list of best-qualified persons shall be forwarded to the County Administrator or Board, as appropriate, for approval prior to beginning contract negotiations. Negotiation sequence shall be based on the order of preference.

D. Negotiation Staff. Contract negotiations shall be conducted by the Purchasing Director or designee(s) or by a Negotiation Committee.

1. Negotiation Committee Membership. Membership of the three-member Negotiation Committee shall consist of:

a) the Purchasing Director, or the designee of the Purchasing Director who shall chair the committee,
b) the head of the primary using department or agency, or his/her designee,
c) the County Attorney or designee.

2. Negotiation. The Negotiator(s) shall negotiate a contract with the firm considered to be the most qualified to provide the services at compensation and upon terms which the Negotiator(s) determines to be fair and reasonable to the County. In making this decision, the Negotiator(s) shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Negotiator(s) be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be formally terminated. The Negotiator(s) shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Negotiator(s) shall formally terminate negotiations, and shall then undertake negotiations with the third most qualified firm. Should the Negotiator(s) be unable to negotiate a satisfactory contract with any of the selected firms, the Selection Committee shall select additional firms in order of their competence and qualifications, and the Negotiator(s) shall continue negotiations in accordance with this Section until an agreement is reached or until a determination has been made not to contract for such services.

3. Continuing Contracts. Nothing in this section (5.091) shall be construed to prohibit continuing contracts for professional services between a firm and the County.

Section 5.09.2 OTHER COMPETITIVE SEALED PROPOSALS

A. Conditions for Use. When the Director of Purchasing determines that the use of competitive sealed bidding is either not practical or not advantageous to the County, a contract may be entered into by the use of competitive sealed proposals.

B. Consultant's Competitive Negotiation Act. Professional services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined under the Consultant's Competitive Negotiation Act (Section 287.055, Florida Statutes), shall be secured under the provisions of Section 5.09.1.

C. Public Notice. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in subsection 5.08C of this policy for competitive sealed bidding.

D. Evaluation Factors. The Request for Proposals shall state the relative importance of criteria outlined in the scope of services, fee proposal, and other evaluation criteria.

E. Proposal Cancellation or Postponement. The Director of Purchasing may, prior to a proposal opening, elect to cancel or postpone the date and/or time for proposal opening or submission.

F. Revisions and Discussions with Responsible Offerors. Discussions may be conducted with responsible offerors who submit proposals determined to be qualified of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

G. Award. Award shall be made to the responsive, responsible offeror whose proposal is determined in writing to be the most advantageous to Leon County, taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation criteria that are not included in the Request for Proposal.

H. Local preference in Other Competitive Sealed Proposals. In the purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures for which a request for proposals is developed with evaluation criteria, a local preference of the total score may be assigned for a local preference, as follows:

1. Individuals or firms which have a home office located within Leon, Gadsden, Wakulla, or Jefferson County, and which meet all of the criteria for a Local Business as defined herein, shall be given a preference in the amount of five percent.
2. Individuals or firms which do not have a home office located within Leon, Gadsden, Wakulla, or Jefferson County, and which meet all of the criteria for a Local Business as defined herein, shall be given a preference in the amount of three percent.

(Reference Article IX, Section 2-400, Chapter 2 of the Code of Laws of Leon County. Florida)

I. If less than two responsive bids, proposals, or replies for commodity or contractual services purchases are received, the Purchasing Director may negotiate on the best terms and conditions. The Purchasing Director shall document the reasons that such action is in the best interest of the County in lieu of resoliciting competitive sealed bids, proposals, or replies. The Purchasing Director shall report all such actions to the County Administrator or designee prior to final award of any contract resulting from the negotiations.

Section 5.10 SOLE SOURCE PURCHASES

A. Sole Source Certification. A contract may be awarded, except as otherwise provided for under state law, for a supply, service, material, equipment or construction item(s) without competition when the Purchasing Director, with the concurrence of the County Administrator or designee, certifies in writing, after conducting a good faith review of available sources, that there is only one available source for the required material, supply, service, equipment, or construction item(s). Such awards will be made within the authorized procurement limits identified in Section 5.0. When a purchase exceeds the threshold amount for Board approval, the item will be placed on the agenda for Board approval and certification that the vendor has been determined to be a sole source.

B. Additional Purchases from Certified Sole Source. The Purchasing Director shall be authorized, after initial sole source certification, to make additional purchases from a sole source vendor for not less than one year or until such time as contrary evidence is presented regarding sole source eligibility, whichever period is less.

Section 5.11 EMERGENCY PURCHASES

A. Authorization During Normal Business Hours. In the case of emergencies that require the immediate purchase of goods, equipment or services, the County Administrator, Purchasing Director, Group Director, or his designee shall be empowered to secure such goods or services without competitive bidding. In this event, all measures reasonably possible under the circumstances shall be taken to assure the maximum cost benefit to the County of the goods or services procured.

B. Authorization Outside of Normal Business Hours. A department or division head, during non-business hours, is authorized to make purchases without competitive bids, when an emergency arises.

C. Documentation and Approval. Documentation for emergency purchases pertaining to Section 5.11 (A) and (B) shall be submitted to the Purchasing Office on the standard requisition form with a detailed explanation, and support material attached, if applicable, within 10 workdays after the event occurred. Emergency purchases that exceed the competitive sealed bid threshold shall be ratified by the Board. Emergency purchases within the informal bid thresholds shall be approved by the County Administrator after-the-fact.

D Mutual Aid Agreements. The County may enter into and utilize Mutual Aid Agreements as provided in Chapter 252, Florida Statutes in the event of emergency situations. The Purchasing Director shall be authorized to invoke the terms of the Mutual Aid Agreement.

Section 5.12 COOPERATIVE PURCHASING

A. State Contracts. The Purchasing Director is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the respective state contracts (state term continuing supply contracts, SNAPS agreements [State Negotiated Agreement Price Schedules], agreements resulting from Invitations to Negotiate [ITN], or other such contracts authorized by statute for use by local governments) of the Florida Department of Management Services or other state agencies. Such purchases shall be made without competitive bids provided that funding has been appropriated and approved by the Board of County Commissioners in Department/Division accounts.

B. Federal Supply Service. The Purchasing Director is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the eligible Federal Supply Schedules issued by the Federal General Services Administration. Such purchases shall be made without competitive bids provided that funding has been appropriated and approved by the Board of County Commissioners in Department/Division accounts.

C. Other Public Procurement Units. The Purchasing Director shall have the authority to join with other units of government in cooperative purchasing ventures when the best interest of the County would be served thereby, and the same is in accordance with the County and State law. The Purchasing Director shall appropriately document such cooperative purchasing arrangements. All Cooperative Purchasing conducted under this section shall be through contracts awarded through full and open competition, including use of source selection methods equivalent to those required by this policy. Each selection method shall clearly state the intention to include participation by other units of government as a requirement for use in cooperative purchasing.

Section 5.13 PROTESTING INTENDED DECISIONS AND PROCUREMENT AWARDS

A. Right to Protest. Any person, hereinafter referred to as Protestor, who submits a timely response to an invitation to bid, a request for proposals, an invitation to negotiate, a request for qualifications, a multi-step sealed bid, or multi-step request for proposals under Sections 5.07, 5.08, 5.09, 5.09.1 or 5.09.2 of this Policy, and who is aggrieved with an Intended Decision of the County or a Procurement Award rendered by the Board of County Commissioners shall have the right to protest. Failure to protest an Intended Decision shall act as a bar to protest a subsequent Procurement Award that adopts the Intended Decision in all material respects.

1. Any Protestor wishing to protest an Intended Decision shall follow the procedures set forth in paragraphs B, C, and D of this Section.

2. Any Protestor wishing to protest a Procurement Award shall follow the procedures in paragraphs B, C, and E of this Section.

B. Filing a Protest. A Protestor shall file with the County a notice of intent to protest in writing within 72 consecutive hours after the posting of the notice of Intended Decision or Procurement Award of the County. A formal written protest shall be filed within 10 calendar days after the date the notice of intent to protest has been filed. Failure to timely file a notice of intent to protest or failure to file a formal written protest shall constitute a waiver of the right to proceedings under this Section.

A notice of intent to protest and the formal written protest are deemed filed with the County when it is received by the Purchasing Division.

1. The notice of intent to protest shall contain at a minimum: the name of the Protestor; the Protestor's address and phone number; the name of the Protestor's representative to whom notices may be sent; the name and bid number of the solicitation; and, a brief factual summary of the basis of the protest.

2. The formal written protest shall: identify the Protestor and the solicitation involved; include a plain, clear statement of the grounds upon which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the Protestor deems applicable to such grounds; and, specify the relief to which the Protestor deems himself entitled.

3. A formal written protest shall include the posting of a bond with the Purchasing Division at the time of filing the formal written protest, made payable to the Board of County Commissioners, Leon County, in an amount equal to one percent (1%) of the County's estimate of the total dollar amount of the contract or $5000, whichever is greater. If after completion of the bid protest process and any court proceedings, the County prevails, the County shall be entitled to recover all court costs provided under Florida law, but in no event attorney fees, which shall be included in the final order of judgment rendered by the court. Upon payment of such court costs by the Protestor, the bond shall be returned to him. After completion of the bid protest process and any court proceedings, if the Protestor prevails, the protestor shall be entitled to have his bond returned and he shall be entitled to recover from the County all court costs provided under Florida law, but in no event attorney fees, lost profits or bid preparation costs, which shall be included in the final order of judgment rendered by the court. In no case will the Protestor or Intervenor be entitled to any costs incurred with the solicitation, including bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.

4. Timeliness of protest determinations. All determinations on the timeliness of notices of intent to protest and formal written protests will be made by the Purchasing Director.

C. General Provisions

1. Intervenor. Any person, hereinafter referred to as Intervenor, who has submitted a timely response to the subject invitation to bid, request for proposals, invitation to negotiate, request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, and who has a substantial interest in the Intended Decision or Procurement Award of the County, may be granted the right to intervene by order of the Chairperson of the Procurement Appeals Board or Special Master in response to a petition to intervene. A petition to intervene shall be filed within five calendar days of the filing of a formal written protest. Failure to timely file a petition to intervene shall constitute a waiver of all rights to intervene in the subject protest proceeding. Petitions to intervene will be considered by the Chairman of the Procurement Appeals Board, and any decision concerning a Petition to Intervene shall be made by the Chairman and shall be deemed final.

2. Time Limits. The time limits in which formal written protests shall be filed as provided herein may be altered by specific provisions in the invitation to bid, request for proposals, invitation to negotiate, request for qualifications, or multi-step sealed bids, or multi-step requests for proposals or upon the mutual written consent of the Protestor and the County.

3. Entitlement to Costs. In no case will the Protestor or Intervenor be entitled to any costs incurred with the invitation to bid, request for proposals, invitation to negotiate, request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, including, but not limited to bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.

~~4.~~ After a formal written protest has been filed with the Purchasing Director, the Protestor may not discontinue such appeal without prejudice, except as authorized by the Procurement Appeals Board or Special Master.

5. Stay of Procurement During Protests. In the event of a timely protest under Section 5.13(B) herein, the Purchasing Director shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the County Administrator makes a written determination that the award of a contract without delay is necessary to protect the substantial interests of the County.

D. Protest of Intended Decisions.

1. Upon timely receipt of a notice of intent to protest an Intended Decision, the Purchasing Director shall provide the Protestor with acknowledgement of receipt and a copy of this Section. The Purchasing Director shall within one business day mail a copy of the notice of intent to protest to all persons who responded to an invitation to bid, a request for proposals, an invitation to negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.

2. Upon timely receipt of a formal written protest of an Intended Decision, the Purchasing Director shall provide the Protestor with acknowledgement of receipt and will notify the Chairman of the Procurement Appeals Board. The Purchasing Director shall within one business day mail a copy of the formal written protest to all persons who responded to an invitation to bid, a request for proposals, an invitation to negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.

3. Procurement Appeals Board. There is hereby established a Procurement Appeals Board to be composed of a chairperson and two members and two alternates. The chairperson, members, and alternates of the Procurement Appeals Board shall be appointed by the County Administrator. The term of office of the chairperson, members, and alternates of the Procurement Appeals Board shall be three years. For the initial appointments, the County Administrator shall appoint the chairperson for a term of three years, one member and one alternate for a term of two years, and one member and one alternate for a term of one year so that a term of office expires every year. Thereafter, their successors shall be appointed for terms of three years, or for the balance of any unexpired term, but members may continue to serve beyond their terms until their successors take office. Members may be reappointed for succeeding terms.

a) The Purchasing Division is authorized to provide for the Procurement Appeals Board such administrative support as the Chairman requests in the hearing of formal written protests.

b) Acting by two or more of its members, the Procurement Appeals Board shall issue a decision in writing or take other appropriate action on each formal written protest submitted. A copy of any decision shall be provided to all parties and the Purchasing Director.

c) Procurement Appeals Board Proceeding Procedures

i. The Procurement Appeals Board shall give reasonable notice to all substantially affected persons or businesses, including the Protestor, and any Intervenor.

ii. At or prior to the protest proceeding, the Protestor and/or Intervenor, as the case may be, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the issues raised.

iii. In the protest proceeding, the Protestor, and/or Intervenor, as the case may be, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross-examination of witnesses shall be permitted, at the discretion of the Chairman of the Procurement Appeals Board. The members of the Procurement Appeals Board may make whatever inquiries they deem pertinent to a determination of the protest.

iv. The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Procurement Appeals Board shall base their decision on competent, substantial evidence. The protest proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.

v. Within seven (7) working days of the conclusion of the protest proceeding, the Procurement Appeals Board shall render a decision. The Procurement Appeals Board decision shall be reduced to writing and provided to the Protestor and/or Intervenor, as the case may be, and the County.

vi. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

E. Protest of Procurement Awards; Special Master Proceedings.

1. Upon timely receipt of a notice of intent to protest a Procurement Award of the County , the Purchasing Director shall provide the Protestor with acknowledgement of receipt and a copy of the this Section. The Purchasing Director shall within one business day mail a copy of the notice of intent to protest to all persons who responded to an invitation to bid, a request for proposals, an invitation to negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.

2. Upon timely receipt of a formal written protest of a Procurement Award of the County, the Purchasing Director shall provide the Protestor with acknowledgement of receipt and will notify the County Attorney of the protest. The Purchasing Director shall within one business day mail a copy of the formal written protest to all persons who responded to an invitation to bid, a request for proposals, an invitation to negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.

3. Appointment of a Special Master. The County Administrator shall appoint and retain a special master or shall contract with the Florida Division of Administrative Hearings for an administrative law judge to act as a special master to conduct evidentiary proceedings regarding formal written protests of Procurement Awards. Each special master shall be a licensed attorney with the Florida Bar who has practiced law in Florida for at least five years, and who has experience in procurement law, local governmental law, or administrative law. Each special master appointed and retained by the County shall serve at the pleasure of the County Administrator and shall be compensated at a rate or rates to be fixed by the County Administrator. The expense of each special master proceeding shall be borne equally by the Protestor and the County.

4. Ex parte communication.

   a) No county employee, elected official, or other person who is or may become a party to a proceeding before a special master may engage in an ex parte communication with the special master. However, the foregoing does not prohibit discussions between the special master and county staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the hearing.

   b) If a person engages in an ex parte communication with the special master, the special master shall place on the record of the pending case all ex parte written communications received, all written responses to such communications, a memorandum stating the substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be entitled to do so, but only if such party requests the opportunity for rebuttal within ten days after notice of such communication. If he or she deems it necessary due to the effect of an ex parte communication received by him, the special master may withdraw from the case.

5. Powers of special masters. The special masters who conduct hearings pursuant to this section shall have the powers of hearing officers enumerated in F.S. § 120.569(2)(f), as amended.

6. Prehearing requirements. At least fourteen days prior to the date set for the hearing, the parties shall exchange a list of names and addresses of witnesses planned to testify at the hearing, and a list of exhibits planned to be introduced at the hearing, as well as produce the physical exhibits for inspection by the parties. Each party is entitled to depose witnesses scheduled to testify at the evidentiary hearing.

7. Hearings.

   a) All hearings shall be commenced within 45 days of the date of the filing of the formal written protest. Requests for continuance by any party, either before or during the hearing, may be considered upon good cause shown.

   b) All hearings shall be open to the public.

   c) The participants before the special master shall be the Protestor, the Protestor's witnesses, if any, county staff and witnesses, and any Intervenor. The participation of Intervenors shall be governed by the terms of the order issued by the special master in response to a petition to intervene. Intervention may only be permitted to any person, hereinafter referred to as Intervenor, who has submitted a timely response to the subject invitation to bid, request for proposals, an invitation to negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, and who has a substantial interest in the Procurement Award.

   d) Testimony and evidence shall be limited to matters directly relating to the formal written protest. Irrelevant, immaterial, or unduly repetitious testimony or evidence may be excluded.

   e) All testimony shall be under oath. The order of presentation of testimony and evidence shall be as set forth by the special master.

f) To the maximum extent practicable, the hearings shall be informal. All parties shall have the opportunity to respond, to present evidence and provide argument on all issues involved which are related to the formal written protest, and to conduct cross-examination and submit rebuttal evidence. During cross-examination of witnesses, questioning shall be confined as closely as possible to the scope of direct testimony and matters involving impeachment. The special master may call and question witnesses or request additional evidence as he or she deems necessary and appropriate.

g) The special master shall render a final order on the formal written protest to the parties within ten days after the hearing concludes, unless the parties waive the time requirement. The final order shall contain written findings of fact and conclusions of law.

Section 5.14 CONTRACT CLAIMS

A. Authority to Settle Contract Controversies. This Section applies to controversies between the County and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission, where the contractor and County agree to utilize the provision of this section.

1. The Purchasing Director is authorized to settle any controversy arising out of the performance of a County contract, prior to the commencement of an action in a court of competent jurisdiction up to $10,000 in value.

a) If such a controversy is not resolved by mutual agreement, the Purchasing Director shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise be furnished to the contractor immediately. The decision shall:

(1) State the reason for the action taken; and,

(2) Inform the Contractor of its right to administrative review as provided in this section.

b) If the Purchasing Director does not issue a written decision required in paragraph (a) of this subsection within 30 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

c) The decision of the Purchasing Director may be appealed to the Procurement Appeals Board by the protestor by filing a formal written appeal with the Purchasing Director within five calendar days of receipt of the Purchasing Director's decision.

2. The Procurement Appeals Board is authorized to review any appeal of a decision on a contract controversy by the Purchasing Director or to hear any contract controversy in excess of $10,000.

3. The Procurement Appeals Board shall promptly decide the contract or breach of contract controversy. The proceeding shall be de novo and shall follow the Proceeding Procedures contained in Section 5.13 (E)(3). Any prior determination by administrative officials shall not be final or conclusive.

Section 5.15 REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

A. Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Director, after consultation with the County Attorney, determines that a solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.

B. Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award of contract, the Purchasing Director, after consultation with the County Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.

C. After Award. If, after award, the Purchasing Director, after consultation with the County Attorney, determines that a solicitation or award of a contract was in violation of applicable law or ordinance, then:

1. If the person awarded the contract has not acted fraudulently or in bad faith:

   a) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the County; or
   b) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to termination, but excluding attorney's fees; or

2. If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the County.

Section 5.16 OWNER DIRECT PURCHASES IN PUBLIC WORKS CONTRACTS

It is the policy of Leon County, Florida that all owner direct purchases for supplies and materials for use in public works projects be made in accordance with section 212.06(6) Florida Statutes and rule 12A-1.094 Florida Administrative Code, as they may be amended from time to time.

The Purchasing Director shall establish administrative procedures, processes, and forms necessary for the implementation and administration of owner direct purchases for supplies and materials for use in public works projects. In addition, the Purchasing Division shall provide training for project managers and other fiscal staff involved in contracts that may utilize owner direct purchases.

Section 5.17 EMPLOYMENT ELIGIBILITY AND VERIFICATION

A. Federal statutes and executive orders require employers to abide by the immigration laws of the United States and to employ in the United States only individuals who are eligible to work in the United States. It is the policy of Leon County, Florida that unauthorized aliens shall not be employed nor utilized in the performance of contracted services for the County, in accordance with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (8 U.S.C. § 1324a), and Subpart 22.18 of the Federal Acquisition Register.

B. Employment Eligibility Verification.

1. This section on employment eligibility verification ("E-Verify") requirements shall apply to contractors and subcontractors performing contracted services for the County, where the contracted services are funded pursuant to federal grants, federal contracts, state grants, or state contracts.

2. Each Contractor and subcontractor, as defined in this section, shall agree to enroll and participate in the federal E-Verify Program for Employment Verification under the terms provided in the "Memorandum of Understanding" governing the program. Contractor further agrees to provide to the County, within thirty days of the effective date of this contract/amendment/extension, documentation of such enrollment in the form of a copy of the E-Verify "'Edit Company Profile' screen", which contains proof of enrollment in the E-Verify Program (this page can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).

3. Contractor further agrees that it will require each subcontractor that performs work under this contract to enroll and participate in the E-Verify Program within sixty days of the effective date of this contract/amendment/extension or within sixty days of the effective date of the contract between the Contractor and the subcontractor, whichever is later. The Contractor shall obtain from the subcontractor(s) a copy of the "Edit Company Profile" screen, indicating enrollment in the E-Verify Program and make such record(s) available to the Agency upon request.

4. Contractor will utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all persons employed during the term of the Agreement by Contractor to perform employment duties within Florida; and (b) all persons (including subcontractors) assigned by Contractor to perform work pursuant to the Agreement.

    a) Contractor must use E-Verify to initiate verification of employment eligibility for all persons employed during the term of the Agreement by Contractor to perform employment duties within Florida within three business days after the date of hire.

    b) Contractor must initiate verification of each person (including subcontractors) assigned by Contractor to perform work pursuant to the Agreement within 60 calendar days after the date of execution of this contract or within 30 days after assignment to perform work pursuant to the Agreement, whichever is later.

5. Contractor further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided previously, and to make such records available to the County or other authorized state entity consistent with the terms of the Memorandum of Understanding.

6. Compliance with the terms of this Employment Eligibility Verification provision is made an express condition of this contract and the County may treat a failure to comply as a material breach of the contract.

C. The Purchasing Director shall establish administrative procedures, processes, and forms necessary for the implementation and administration of this policy section. In addition, the Purchasing Division shall provide training for project managers and other staff involved in contracts that may utilize E-Verify requirements.

Section 6 CONTRACT ADMINISTRATION

The Purchasing Director or his designee shall serve as the chief contract administrator for the County. The Purchasing Director shall establish administrative procedures, processes, and tools necessary for the implementation and conduct of a comprehensive contract administration program. In addition, the Purchasing Division shall provide initial contract administration training for project managers and update training as deemed necessary.

Section 6.1 CONTRACT PROVISIONS

A. Standard Contract Clauses and Their Modification. The Purchasing Director, after consultation with the County Attorney, may establish standard contract clauses for use in County contracts. However, the Purchasing Director may, upon consultation with the County Attorney, vary any such standard contract clauses for any particular contract.

B. Contract Clauses. All County contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Director, after consultation with the County Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects:

1. the unilateral right of the County to order, in writing, changes in the work within the scope of the contract;

2. the unilateral right of the County to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;

3. variations occurring between estimated quantities or work in contract and actual quantities;

4. defective pricing;

5. time of performance and liquidated damages;

6. specified excuses for delay or nonperformance;

7. termination of the contract for default;

8. termination of the contract in whole or in part for the convenience of the County;

9. suspension of work on a construction project ordered by the County;

10. site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:

    a) when the contract is negotiated;
    b) when the contractor provides the site or design;
    c) when the parties have otherwise agreed with respect to the risk of differing site conditions.

11. value engineering proposals.

Section 6.2 PRICE ADJUSTMENTS

A. Methods of Price Adjustment. Adjustments in price during the term of a contract shall be computed in one or more of the following ways upon approval by the Board:

1. by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

2. by unit prices specified in the contract or subsequently agreed upon;

3. by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon by the Board;

4. in such other manner as the contracting parties may mutually agree; or

5. in the absence of agreement by the parties, by a unilateral determination by the County of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the County, subject to the provisions of this section.

B. Cost or Pricing Data Required. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of this Section.

Section 6.3 CHANGE ORDERS/CONTRACT AMENDMENTS

A. Change Orders. Change Orders are written documentation reflecting changes made to stipulations, condition, or terms of the contract during the contract period whether the contract is a capital improvement or a consultant services contract. There are two types of change orders that may be made to these contracts.

1. Field Change Order. This change order is identified in the original approved contract as a contingency and is referred to as a field change order. It is customary in more complex contracts to include a contingency for changes to the original contract through Field Change Orders. For contracts of less than $1,000,000, a contingency may be included generally not to exceed 10% of the contract value, unless circumstances justify same. For contracts in excess of $1,000,000, a contingency shall be included, but shall generally not exceed 5% of the original contract value, unless circumstances justify same.

   When a contract is approved with such a contingency, the Project Manager with the concurrence of the respective Department Director or designee is authorized to approve one or more Change Orders up to the aggregate monetary value of the contingency. The contract must contain an approved contingency clause for this type of Field Change Order such as "The contract price includes a 5% or 10% (whichever is applicable) contingency amount for change orders that may be authorized at the discretion of the County."

Alternately, as a part of the project award recommendation, staff may propose an alternate amount for the level of pre-approved field Change Orders based upon the known complexity of the project; the certainty of unknown factors such as asbestos abatement or unknown conditions in rehabilitation; or other such factors for consideration by the Board.

2. Board Approved Change Order. Any Change Order, the cost of which exceeds the Field Change Order Threshold amount, or a Change Order which amends the scope of work or services in a significant manner, shall be considered by the Board.

B. Contract Amendments. Contract amendments, other than change orders, which provide for the alteration of specifications, delivery point, time, payments, quantity, or similar provisions of a contract without changing the scope of the project, may be approved by an appropriate person based upon the dollar value of the amendment. The purchasing categories' thresholds designated in Sections 5 through 5.09 shall govern the appropriate level of approval.

Section 6.4 ASSIGNMENTS OF CONTRACTS

No agreement made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the County nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of the County.

Section 6.5 RIGHT TO INSPECT PLANT

The County may, at its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded, or to be awarded, by Leon County. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving Leon County.

Section 7 RIGHTS OF BOARD OF COUNTY COMMISSIONERS

Nothing in this Policy shall be deemed to abrogate, annul, or limit the right of the Board in accordance with Florida law and in the best interests of the County, to reject all bids/proposals received in response to a solicitation , to determine in its sole discretion the responsiveness and responsibility of any bidder/proposer, to approve and authorize or to enter into any contract it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when necessary and desirable for the public welfare.

Section 8 COUNTY PROCUREMENT RECORDS

A. Procurement Files. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the County in appropriate files by the Purchasing Director.

B. Retention of Procurement Records. All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules established by the State of Florida.

Section 9 SPECIFICATIONS

Section 9.1 MAXIMUM PRACTICABLE COMPETITION

All specifications shall be drafted to promote overall economy and encourage competition in satisfying the County's needs and shall not be unduly restrictive. This policy applies to all specifications including, but not limited to, those prepared for the County by architects, engineers, designers, and draftsmen.

Section 9.2 USE OF BRAND NAME OR EQUIVALENT SPECIFICATIONS

A. Use. Brand name or equivalent specifications may be used when the Purchasing Director determines that:

1. no other design, performance, or qualified product list is available;
2. time does not permit the preparation of another form of purchase description, not including a brand name specification;
3. the nature of the product or the nature of the County requirements makes use of a brand name or equivalent specification suitable for the procurement; or
4. use of a brand name or equivalent specification is in the County's best interests.

B. Designation of Several Brand Names. Brand name or equivalent specifications shall seek to designate three, or as many different brands as are practicable, as "or equivalent" references and shall further state that substantially equivalent products to those designated may be considered for award.

C. Required Characteristics. Unless the purchasing agent determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristics required.

D. Nonrestrictive Use of Brand Name or Equivalent Specifications. Where a brand name or equivalent specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

E. Determination of Equivalents. Any prospective bidder may apply, in writing, for a pre-bid determination of equivalence by the Purchasing Director. If sufficient information is provided by the prospective bidder, the Purchasing Director may determine, in writing and prior to the bid opening time, that the proposed product would be equivalent to the brand name used in the solicitation.

F. Specifications of Equivalents Required for Bid Submittal. Vendors proposing equivalent products shall include in their bid submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purposes only.

Section 9.3 BRAND NAME SPECIFICATIONS

A. Use of Brand Name Specifications. Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Director makes a determination that only the identified brand name item or items will satisfy the County's needs.

B. Competition. The Purchasing Director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 5.10, Sole Source Purchases.

Section 10 ETHICS IN PUBLIC CONTRACTING

Section 10.1 CRIMINAL PENALTIES

To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to civil sanctions set forth in this part.

Section 10.2 EMPLOYEE CONFLICT OF INTEREST

A. Participation. It shall be unethical for any County employee to participate directly or indirectly in a procurement contract when the County employee knows that:

1. the County employee or any member of the County employee's immediate family (father, mother, brother, sister, child, grandparent, or grandchild of employee or spouse) has a financial interest pertaining to the procurement contract; or

2. any other person, business, or organization with whom the County employee or any member of a County employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

B. Blind Trust. A County employee or any member of a County employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

Section 10.3 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

It shall be unethical for any County employee who is participating directly or indirectly in the procurement process to become or to be, while such a County employee, the employee of any person contracting with the County.

Section 10.4 USE OF CONFIDENTIAL INFORMATION

It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

Section 10.5 WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST

The County Administrator may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

A. the contemporaneous employment or financial interest of the County employee has been publicly disclosed;

B. the County employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and

C. the award will be in the best interest of the County.

Section 10.6 GRATUITIES AND KICKBACKS

A. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee, or for any County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or performing in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal therefor.

B. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

C. Contract Clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefore.

Section 10.7 SANCTIONS

A. Employee Sanctions. Upon violation of the ethical standards by an employee, the County Administrator, Purchasing Director, or other appropriate authority may:

1. impose one or more appropriate disciplinary actions as defined in the County Personnel Rules and Regulations, up to and including termination of employment; and,

2. may request investigation and prosecution.

B. Non-employee Sanctions. The Board may impose any one or more of the following sanctions on a non-employee for violation of the ethical standards:

1. written warnings;

2. termination of contracts; or

3. debarment or suspension as provided in Section 15.

Section 10.8 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS

A. General Provisions. The value of anything being transferred or received in breach of the ethical standards of this policy by a County employee or a non-employee may be recovered from both County employee and non-employee.

B. Recovery of Kickbacks by the County. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

Section 11 FEDERAL POLICY NOTICE

Section 11.1 PATENTS

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include the following provisions.

A. Notice to Contractor. The contract shall give notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery or invention arising out of the contract.

B. Notice by Contractor. The contract shall require the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

Section 11.2 NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS

A. Applicability. If the contract is being funded in whole or in part by assistance from any federal agency, the contract is subject to one or more federal public policy requirements such as:

1. equal employment opportunity;

2. affirmative action;

3. fair labor standards;

4. energy conservation;

5. environmental protection; or

6. other similar socio-economic programs.

B. Notice. The Purchasing Director shall include in the contract all appropriate provisions giving the contractor notice of these requirements. Where applicable, the Purchasing Director shall include in the contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

Section 12 INSURANCE REQUIREMENTS

A. Minimum Requirements. Contractor shall purchase and maintain such insurance as will protect it from claims under Workers' Compensation laws, disability benefit laws or other similar employee benefit plans; from claims or damages because of bodily injury, occupational sickness or disease or death of its employees and claims insured by usual personal injury liability coverage in amounts determined by the provisions of the Risk Management Policy.

B. Certificates of Insurance. Certificates of Insurance acceptable to the County shall be filed with the Purchasing Division prior to the commencement of the work and periodically thereafter upon any renewals during the term of the contract.

C. Change of Insurance Requirements. The Board of County Commissioners reserves the right to change the insurance requirements based on the project scope, or when determined in the best interest of the County.

Section 13 BONDS AND DEPOSITS

When any of the following bonds is (are) required, the bond(s) will be requested in the bid document. No work in connection with the fulfillment of a contract shall commence until the appropriate bond(s) is (are) accepted by the County.

Section 13.1 TYPES OF BONDS AND DEPOSITS:

A. Combination Payment and Performance Bond - This type of bond is required for repairs, renovations, new construction, and other public works costing in excess of $200,000. For projects less than that amount, it may be required at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. When a payment and performance bond is required, the bond will be requested in the bid document. No work in connection with the fulfillment of a contract shall commence until the payment and performance bond is accepted by the County.

B. Performance Bond - For a project of an estimated value less than $200,000, requirement of a performance bond will be at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. For projects estimated to be $200,000 or more, such bond will be required to insure that a contract is carried out in accordance with the applicable specifications and at the agreed contract price.

C. Payment and Material Bond - For a project of an estimated value less than $200,000, requirement of a payment and material bond will be at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. For projects estimated to be $200,000 or more, such bond will be required to protect the County from suits for non-payment of debts, which might be incurred by a contractor's performance for the County.

D. Warranty Bonds - At the discretion of the Purchasing Director, after consultation with user departments, a Warranty Bond may be required from a successful bidder to insure warranty provisions are fulfilled.

E. Guaranty of Good Faith Deposit (Bid Deposit) - For projects estimated to be less than $200,000, requirement of a bid bond will be at the discretion of the Purchasing Director with the approval of the County Administrator or his designee. For purchases where it is determined by the Purchasing Director to be in the best interest of the County, and projects estimated to be $200,000 or more, bidders will be required to submit with their bid or proposal a guaranty of good faith deposit. When in the best interest of the County, it is recommended by the Purchasing Director and approved by the County Administrator or his designee, these requirements may be waived.

1. Return of Bond. Such deposit may not be withdrawn until a specified time after the proposals are opened and awards made. The deposit of the bond shall be retained by the Finance Officer of the Board until the Purchasing Director is satisfied that the Contractor's obligations have been satisfactorily completed.

2. Substitutes. In lieu of a surety bid bond, contractor may submit a certified check, cashier's check, or treasurer's check, on any national or state bank. Such deposits shall be in the same percentage amounts as the bond. Such deposits shall be retained by the Finance Officer of the Board until all provisions of the contract have been met.

F. Irrevocable Letter of Credit. Upon approval of the Purchasing Director, a contractor may present an Irrevocable Letter of Credit from a national or state chartered bank in lieu of any of the foregoing bonds for the same face value as required for the bond. The letter of credit shall be for a period of time not less than three months beyond the scheduled completion date of the purchase of the contracted services or materials.

G. Retention of Payments. The County may require the payment for a project, or a portion thereof, be withheld until the project has been completed as a method of protecting the County's interest. Retention may also be used in lieu of the above listed bonds. The solicitation documents shall specifically state if retention of any portion or all of the payment for the project is to be done.

Section 13.2 AMOUNT OF BOND OR DEPOSIT

A. Amount of Bond. Bonds or deposits, which may be required, shall normally be in the following amounts, except as provided in the following subsection B.

1. Performance Bond: 100% of contract price.

2. Payment Bond: 100% of contract price.

3. Payment and Performance Bond: 100% of contract price.

4. Guaranty of Good Faith Deposit (Bid Deposit or Bond): The bid deposit will be 5% of the price bid by the vendor.

B. Exceptions to Amount of Bond. Any of the previously listed bonds may be required at another amount recommended by the Purchasing Director and approved by the County Administrator or his designee when in the best interest of the County.

Section 13.3 PROCESSING OF BONDS AND DEPOSITS:

A. Responsibility for Securing Bonds. The contractor shall be responsible for securing the bond. Any costs may be included in the contract price.

B. Licensure of Bonding Company. The company acting as surety for any bond issued shall be licensed to do business in the State of Florida.

C. Review of Bonds by County Attorney. Surety bonds furnished will be reviewed by the County Attorney, who shall either accept or reject it for the Board. All surety bonds accepted shall be forwarded to the Finance Officer of the Board by the Purchasing Director to be filed in the official records of the Board.

D. Failure to Provide Required Bond. In the event a contractor fails to provide an acceptable bond when required, within 10 days after notification, the County Attorney will be notified. Upon the recommendation of the County Attorney, the Board may declare the contract null and void, and retain in the account of Leon County any good faith deposits or guaranty which may have been submitted as liquidated damages under the terms of the solicitation.

E. Filing of Bonds. Bonds, when accepted, shall be forwarded to the Finance Officer of the Board and shall be filed with the applicable contract documents.

F. Deposits. Cash deposits (cashier's check, money orders, bank drafts, etc.) of all bidders shall be forwarded to the Finance Officer of the Board for deposit to the account of the Board of County Commissioners. Upon award of contract, the Purchasing Director or designee shall be responsible for approving the return of deposits to unsuccessful bidders.

G. Plans and Specification Deposit/Fees. The Purchasing Director is authorized to assess reasonable deposits and/or fees, not to exceed the cost of reproduction, for plans and specifications issued as a part of invitations for bids or requests for proposals. Deposits of all bidders for plans and specifications shall be forwarded to the Finance Officer of the Board for deposit to the account of the Board of County Commissioners. Upon award of contract, the Purchasing Director or designee shall be responsible for approving the return of refundable deposits to unsuccessful bidders. Fees are to be deposited into the account from which applicable reproduction costs are paid.

Section 14 PAYMENT TO VENDORS

It is the policy of Leon County, Florida that payment for all purchases by the County be made in a timely manner in accordance with the provisions of the "Local Government Prompt Payment Act," sections 218.70 – 218.79, Florida Statutes.

The Purchasing Director, in conjunction with the Finance Director, shall establish administrative procedures, processes, and forms necessary for the implementation and administration of payments for all contracts under the requirements of the Local Government Prompt Pay Act. In addition, the Purchasing Division shall team with the Finance Department to provide accounts payable training for project managers and other fiscal staff involved in contracts and update training as deemed necessary.

Section 14.1 PAYMENT DISPUTE RESOLUTION

A. In the event a dispute occurs between a contractor/vendor, herein referred to as vendor, and the County concerning payment of a payment request for construction work or an invoice for goods and/or services, the vendor should first attempt to resolve the issue with the Project Manager. If the dispute cannot be resolved between the vendor and the Project Manager within two business days of the dispute first being raised, the vendor may file a formal payment dispute. Formal payment dispute resolution shall be finally determined by the County, under this procedure in accordance with Florida Statute (FS) 218.76.

B. Definitions. These definitions are specific to Section 14.1 of this policy.

1. "Project Manager" is the Leon County employee responsible for managing the contract and approving payment requests and invoices related to the payment dispute.

2. "Contract Manager" is the Leon County employee within the County Purchasing Division responsible for monitoring contracts. The Contract Manager serves as Chair of the Payment Dispute Resolution Committee.

C. Filing a Dispute. Any vendor shall file with the Contract Manager in the County Purchasing Division a formal notice of payment dispute in writing within two (2) business days of the dispute first being raised.

1. The notice of payment dispute shall contain at a minimum: the name of the vendor; the vendor's address and phone number; the name of the vendor's representative to whom notices may be sent; the contract number associated with the payment dispute; and, a brief factual summary of the basis of the dispute.

2. Waiver. Failure to timely file a written payment dispute shall constitute a waiver of proceedings under this section.

3. Upon timely receipt of a formal payment dispute, the Contract Manager shall provide the vendor with acknowledgement of receipt, will notify the Payment Dispute Resolution Committee, and will coordinate with all parties to establish the date and time for a Payment Dispute Resolution Proceeding.

D. General Provisions

1. Time Limits. Proceedings to resolve the dispute shall be commenced not later than 45 calendar days after the date on which the payment request or proper invoice (as specified in the contract document) was received by the County and shall be concluded by final decision of the County not later than 60 calendar days after the date on which the payment request or proper invoice was received by the County.

2. Protest. Dispute resolution procedures shall not be subject to chapter 120, and such procedures shall not constitute an administrative proceeding, which prohibits a court from deciding de novo any action arising out of the dispute.

3. Interest. If the dispute is resolved in favor of the County, then interest charges shall begin to accrue 15 calendar days after the County's final decision. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.

4. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

E. Payment Dispute Resolution Proceeding Process

1. All formal payment disputes shall be presented to the Payment Dispute Resolution Committee. The committee shall be comprised of the Contract Manager, Purchasing Director, and appropriate Division Director for the County or their designees.

2. Within three (3) business days of timely receipt of a formal notice of payment dispute, the Contract Manager shall schedule a proceeding before the Payment Dispute Resolution Committee to include all substantially affected persons or businesses, including the vendor and County project manager. Non-appearance by the vendor shall constitute a forfeiture of proceedings with prejudice.

3. At or prior to the dispute proceeding, the vendor and project manager, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the payment dispute.

4. In the proceeding, the vendor and project manager, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross-examination of witnesses shall be permitted, at the discretion of the Chairman of the Payment Dispute Resolution Committee. The members of the Payment Dispute Resolution Committee may make whatever inquiries they deem pertinent to a determination of the dispute.

   a) The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Payment Dispute Resolution Committee shall base their decision on competent, substantial evidence. The proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.

   b) Within three business days of the conclusion of the proceeding, the Payment Dispute Resolution Committee shall render a decision. The Payment Dispute Resolution Committee decision shall be reduced to writing and provided to the vendor and the County project manager. The decision of the Payment Dispute Resolution Committee shall be final and conclusive for all disputes valued less than $100,000.

   c) For those disputes valued above $100,000, the Payment Dispute Resolution Committee shall file a Recommended Agency Order for approval by the County Administrator or his designee.

Section 15 AUTHORIZATION TO DEBAR OR SUSPEND VENDOR(S)

A. Suspension. After consultation with the County Attorney, the Purchasing Director is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity, which might lead to debarment. The suspension shall be for a period not to exceed three (3) months, and the Purchasing Director shall immediately inform the Board and provide notice to the affected person.

B. Debarment. After reasonable notice and a reasonable opportunity for the suspended person to be heard, the Board shall either disbar such person or terminate the suspension. The debarment should be for a period of not more than three (3) years.

C. Causes for Debarment. The causes for debarment include:

1. entry of a plea of guilty, no contest, or nolo contendere to or conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

2. entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;

3. entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

4. violation of contract provisions, as set forth below, of a character which is regarded by the Board to be so serious as to justify debarment action:

   a) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

   b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

5. having been adjudicated guilty of any violation by the Leon County Contractor's Licensing Board, or the State of Florida Construction Industry Licensing Board within the past twelve (12) month period at the time of bid submittal;

6. having been adjudicated guilty by the Leon County Code Enforcement Board of any violation of an environmental ordinance within the past six (6) month period at the time of bid submittal; and

7. any other cause the Purchasing Director or Board determines to be as serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity.

D. Notice of Decision. The Purchasing Director shall issue a written notice to the person of the decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial or administrative review. The written decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

Section 15.1 APPEAL OF DECISION TO DEBAR OR SUSPEND

The Board's decision to debar or suspend a person or business shall be final and conclusive, unless the debarred person commences a timely action in court in accordance with applicable law.

Section 16 MINORITY, WOMEN AND SMALL BUSINESS ENTERPRISE PROGRAM

A. Purpose. The purpose of the Minority and Women-Owned Business Enterprise and Small Business Enterprise (MWSBE) Program is to effectively communicate Leon County procurement and contracting opportunities, through enhanced business relationships, to end disparity and to increase participation opportunities for certified minority and women-owned business enterprises and small business enterprises in a competitive environment.

B. Definitions. These definitions are specific to Section 16 of this policy.

1. "Affiliate" or "Affiliation" – Shall mean when Eligible Owner either directly or indirectly controls or has the power to control the other; a third party or parties controls or has the power to control both; or other relationships between or among parties exist such that affiliation may be found. A business enterprise is an Affiliate of an Eligible Owner when the Eligible Owner has possession, direct or indirect of either: (i) the Ownership of or ability to direct the voting of as the case may be more than fifty percent (50%) of the equity interest, value or voting power of such business, or (ii) the power to direct or cause the direction of the management and policies of such business whether through the Ownership of voting securities by contract or otherwise. In determining whether a business is an Affiliate with another business or with an Owner, consideration shall be given to all appropriate factors including but not limited to common Ownership, common management, contractual relationship and shared facilities.

2. "Applicant" – Shall mean a Person who has submitted a Certification Application to the MWSBE Division for Certification consideration.

3. "Aspirational Targets" – Shall mean the percentage or dollar level targeted for the minimum level of MBE, WBE, or SBE participation for a particular procurement opportunity.

4. "Bidder" – Shall mean, unless otherwise stated, a party responding to an invitation for bid, or other form of a procurement opportunity.

5. "Business Categories" shall include and shall have the following meaning:

   a) "Architecture & Engineering" – Shall mean architectural or engineering services provided by an appropriately licensed professional architect or engineer, or by a professional architectural or engineering firm, related to architectural or engineering services.

      i. "Architecture" - When provided by an appropriately licensed architect or architectural firm that employs appropriately licensed architects, "architecture" shall mean the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.

      ii. "Engineering" – "Engineering" shall include the term "professional engineering" and, when provided by an appropriately licensed "professional engineer", "licensed engineer", or an engineering firm that employs appropriately licensed professional or licensed engineers, "engineering" shall mean any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services.

b) "Construction" – Shall mean services that include the building, attaining, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property. It does not include routine operation, routine repair, or routine maintenance of existing buildings or facilities.

c) "Professional Services" – Shall mean any service provided by a person or firm that is of a professional nature, with special licensing, educational degrees, and unusual or highly specialized expertise. Examples include, but are not limited to Financial Services, Legal Services, Medical Services, and Advertising/Marketing Services. "Professional Services" does not include "Architecture & Engineering," which is previously separately defined herein.

d) "Other Services" – Shall mean any service that is labor intensive and not professional or construction related. Examples include, but are not limited to maintenance services, janitorial services, lawn services, employment services, and printing services.

e) "Materials and Supplies/Purchases" – Shall mean the equipment and consumable items purchased in bulk, or deliverable products. Examples of such include, but are not limited to equipment and parts, chemicals, and paper products.

6. "Certification" – Shall mean the verification that a business meets all of the eligibility criteria for participation in the MWSBE Program as a SBE and/or a MBE or WBE.

7. "Certification Application" – Shall mean the forms and documents an Applicant must complete to be considered for Certification.

8. "Commercially Useful Function" - Shall mean a business that: (a) is responsible for the execution of a distinct element of work or services; (b) carries out its obligation by actually performing, managing, or supervising the work involved; (c) performs work that is normal for its business, services and function; and (d) is not further Subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices. A Contractor, Subcontractor, Vendor or Supplier shall not be considered to perform a Commercially Useful Function if the Contractor's, Subcontractor's, Vendor's or Supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MWSBE participation.

9. "Contract" - Shall include any agreement, regardless of what it may be called, between the County and a Person to provide or procure labor, materials, supplies, or services to, for, or on the behalf of the County.

10. "Contractor" - Shall mean any person, firm, or legal entity that has entered into a Contract with the County or any of its contracting agencies.

11. "Control" – Shall mean the Applicant Owner(s) actually exercise control over the business' operations, work, management, and policy. Indication of such control are set forth as follows:

    a) Applicant Owner(s) must demonstrate the ability to make unilateral and independent business decisions as needed to guide the future and destiny of the business, and their business must not be subject to any formal or informal restrictions that limit the customary discretion of such Applicant Owner(s). There can be no restrictions through corporate provisions, by-law provisions, contracts or any other formal or informal devices that prevent the Applicant Owner(s) from making any business decision of the firm without the cooperation or vote of another entity or Person that is not an Applicant Owner(s) or who would not be eligible for the MWSBE Program.

    b) The Applicant Owner(s) must control the day-to-day operations of the business in the critical area(s). Administrative responsibilities alone are not sufficient to prove control. The Applicant Owner(s) may delegate various areas of the management or daily operations of the business to persons, who would not qualify to be MWSBEs or who are not Applicant Owners, only if such delegation is typical in the industry for such business and such delegation is revocable.

c) The Applicant Owner(s) must have an overall understanding of, and managerial and technical competence, experience and expertise, directly related to the business' operations and work.

12. "County" - Shall mean Leon County, Florida

13. "County Facilities" – Shall mean County buildings and other buildings and structures owned, leased, or used by the County or its contractors, assignees, lessees and licensees.

14. "Front" – Shall mean a business that intentionally and/or falsely holds itself out as a business that is Controlled and Owned at least 51% by a Minority(ies), a Woman or Women, when in fact it is not.

15. "Good Faith Committee" – Shall mean a standing committee whose purpose is to determine the validity of a Bidder's Good Faith Efforts to meet Aspirational Targets, as it relates to MWSBE participation for a procurement opportunity, when a Bidder with Subcontracting and/or Supplier opportunities fails to meet the Aspirational Targets, and the MWSBE Director has determined that the Bidder has not made Good Faith Efforts.

16. "Good Faith Efforts" – Shall mean efforts exercised by a Bidder in good faith to meet Aspirational Targets for MWSBE participation as a Subcontractor or Supplier, as may be relevant to the particular bid or RFP. The Bidder can demonstrate that it has made a Good Faith Effort by meeting the Aspirational Targets, or by demonstrating it has made reasonable efforts to do so, such as in person**,** written, telephone, electronic communication, contact with certified MWBE's, provisions of plans or specifications to MWBE's, or outreach efforts with MWBE's.

17. "Independent" – Shall mean a business whose viability does not depend on its relationship with another firm. Recognition of an Applicant business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a business is independent. Considerations of such independence include: (i) relationships with other businesses in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources; (ii) whether present or recent family, or employer/employee relationships compromise the Applicant Owner(s)' independence; and (iii) whether the Applicant Owner(s)' exclusive or primary dealings with a prime contractor compromises the Applicant Owner(s)' independence.

18. "Joint Venture" – Shall mean a legal organization that takes the form of a short-term partnership in which the parties jointly undertake for a transaction, for which they combine their property, capital, efforts, skills, and knowledge. Generally, each party shall contribute assets and share risks. Joint Ventures can involve any type of business transaction and the parties involved can be individuals, groups of individuals, companies, or corporations.

19. "Local Market" – Shall mean the geographical area consisting of the following Florida counties: Leon, Gadsden, Jefferson, and Wakulla.

20. "Majority Ownership" or "Majority Owner" – Shall mean owning no less than 51% of a business enterprise.

21. "Minority Business Enterprise" (MBE) - Shall mean a business whose MBE Certification is recognized, current, and accepted by Leon County's MWSBE Program.

22. "Minority Person" or "Minority" - Shall mean an individual who is a citizen of the United States, or a lawfully admitted permanent resident, and who identifies himself or herself as being African, Hispanic, Asian, American Indian, Alaskan Native, and American Aleut descent.

    a) "African American" – Which shall mean all persons having origins from Africa

    b) "Hispanic American" – Which shall mean all persons having origins from a Hispanic country.

    c) "Asian American" – Which shall mean all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.

    d) "American Indian", "Alaskan Native" and "American Aleut" – Which shall mean all persons having origins in any of the original people of North America

23. "Minority, Women and Small Business Enterprise" (MWSBE) – Shall refer jointly to MBE, WBE and SBE, or any combination thereof.

24. "MWSBE Director" - Shall mean the Director of Leon County's MWSBE Division and manager of the MWSBE Program.

25. "MWSBE Program" – Shall mean the programs and efforts set forth by Leon County under the provisions of this policy, either directly or through partners, to enhance participation in County procurements to achieve parity for MBEs, WBEs, and SBEs.

26. "Owner" or "Ownership" – Shall mean the person(s) who own(s) a business.

27. "Parity" – Shall mean the utilization of MBEs and WBEs for County Contracting and procurements in a share equal to the availability of MBEs and WBEs in the Local Market who are willing, able and available to perform the services and provide the goods being Contracted or procured.

28. "Participation Plan" – Shall mean the response provided by the Bidder as a part of their bid or proposal and which provides the detailed information in response to the Aspirational Targets contained in the invitation to bid or request for proposals.

29. "Person or Party" – Shall mean one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one or more individuals, and further includes any department, office, agency or instrumentality of the County.

30. "Prime Contractor" – Shall mean a person or firm who is qualified and responsible for the entire project contracted, who may have one or more Subcontractors.

31. "Purchasing" or "Procurement"- Shall mean the buying, renting, leasing or otherwise obtaining or acquiring any goods, supplies, materials, equipment, or services.

32. Respondent – The Person or Party who responds to a request for proposal or a request for qualification.

33. "Small Business Enterprise" (SBE) – Shall mean a business whose SBE Certification is recognized, effective and accepted by Leon County's MWSBE Program.

34. "Small Business Enterprise Program" (SBE Program) – Shall mean those components of the MWSBE Program that targets increased participation of SBEs in the County's procurements, including the coordination with other entities and agencies that assist small businesses through various means such as education and networking.

35. "Subcontract" - Shall mean any agreement, arrangement, or understanding, written or otherwise, between a Contractor and any Party (in which the parties do not stand in relationship of employer and employee) which assigns some of the obligations of the Contract:

    a) For the furnishing of supplies or services or for the use of real personal property; including lease arrangements which, in whole or in part, is/are utilized in the performance of one or more Contracts with the County; or

    b) Under which any portion of the Contractor/Vendor's obligation under one or more Contracts with the County is performed, undertaken, or assumed.

36. "Subcontractor" – Shall mean any Party performing work for a Prime Contractor engaged by Leon County under a Contract with a Contractor.

37. "Supplier" - Shall mean a business that furnishes needed items to a Contractor, and (i) is either involved in the manufacture or distribution of the supplies or materials; or (ii) otherwise warehouses and ships the supplies.

38. "Vendor" – Shall mean a business that sells goods or services.

39. "Woman" or "Women" - Shall mean an American woman who has not self-identified, within the definition of this Section, as a Minority Person or Minority.

40. "Women Business Enterprise" (WBE) - Shall mean a business whose WBE Certification is recognized, effective and accepted by Leon County's MWSBE Program.

C. Administrative Authority, Powers and Duties

1. The provisions of the MWSBE Program shall be administered and enforced by the MWSBE Director.

2. The MWSBE Director's powers and duties include the following:

   a) Establish written procedures to implement the MWSBE Program, including the Certification of businesses as SBEs, MBEs and WBEs;

   b) Assess the Certification of applications for the MWSBE program, and coordinate Certifications with partner agencies;

   c) Maintain a database of MWSBEs and provide assistance to County departments and divisions in identifying MWSBEs for anticipated procurements;

   d) Provide information and assistance to MWSBEs to assist them with increasing their ability to compete effectively for the award of County solicitations for procurements;

   e) Apprise SBEs, MBEs and WBEs of opportunities for technical assistance and training;

   f) Identify and work to eliminate barriers that inhibit MWSBE participation in the County's procurement process;

   g) Establish realistic MBE and/or WBE Aspirational Targets for specific procurements;

   h) Establish realistic Aspirational Targets and identify procurement opportunities for competition among SBEs;

   i) Monitor the utilization of MWSBEs and the progress of the MWSBE Program to ensure that MWSBEs have opportunities to participate in the County's procurement of goods and services, and report on the progress of the MWSBE Program at least annually;

   j) Implement mechanisms and procedures for monitoring utilization of MWSBEs in accordance with Contract requirements; and,

   k) Perform outreach by networking with state and local governments, nonprofit organizations, professional and trade organizations and participate in conventions and seminars sponsored and widely attended by small, minority, and women business owners.

3. All Departments and Divisions under the jurisdiction of the Leon County Board of County Commissioners are responsible for assisting in the implementation of the MWSBE Program.

D. MWSBE Citizens Advisory Committee – The Tallahassee-Leon County MWSBE Citizens Advisory Committee shall monitor the progress of the MWSBE Program toward achieving program performance goals established by the Board of County Commissioners. The Committee may be requested to review and provide MWSBE policy alternatives, as well as provide programmatic recommendations relative to seeking resolution of disputes regarding Certification and Good Faith Efforts. There are eleven members: four appointed by the County Commission, four appointed by the City Commission, and one nominated appointee each from the Big Bend Minority Chamber of Commerce, Capital City Chamber of Commerce, and the Greater Tallahassee Chamber of Commerce. Members serve two year terms with vacancies being filled for the remainder of a term; and, reappointments will be limited to two consecutive terms. The Committee shall be chaired by a Chairperson nominated and elected by the members of the Committee. A quorum of the membership shall be required to conduct any meeting of the Committee. All meetings shall be noticed, open to the public and minutes of any such meeting shall be recorded.

E. Aspirational Targets

1. The Aspirational Targets (Section 16, Table 1) were identified through the October 15, 2009 Disparity Study Update performed by MGT America and accepted by the Leon County Board of County Commissioners on October 27, 2009.

Section 16, Table 1- Aspirational Targets		
Procurement Category	**Aspirational MBE Target**	**Aspirational WBE Target**
Construction Prime Contractors	8%	5%
Construction Subcontractors	17%	9%
Architecture & Engineering	12%	14%
Professional Services	7%	15%
Other Services	10%	8%
Materials and Supplies	1%	6%

2. The Aspirational Targets for individual bids/RFPs may be higher or lower than the participation levels identified in Section 16, Table 1, and should reflect realistic M/WBE availability for the particular project.
3. Aspirational Targets are considered to be the minimum level of MBE, WBE, and/or SBE participation expected for a particular procurement. Aspirational Targets are considered to be targets set to achieve participation levels commensurate with available businesses, and for which there are opportunities for exemptions based upon Good Faith Efforts.
4. Aspirational Targets shall be reasonable (with consideration given to Subcontracting opportunities and the availability of MBEs, WBEs, or SBEs in the Market Area, that are capable of performing the work).
5. Aspirational Targets may not be appropriate when Subcontracting is not reasonable or permitted.
6. In cases where it is not reasonable to set Aspirational Targets, the MWSBE Director may encourage MWSBE participation through Bidder's purchase of goods or services from MWSBEs, consistent with the Aspirational Targets, or provide for any combination thereof.
7. Aspirational Targets shall apply to all Bidders, including MBE, WBE, and SBE Bidders.
8. Only the dollars expended with certified MWSBE firms shall be considered toward satisfying the Aspirational Targets.
9. In an effort to meet Aspirational Targets, Departments and Divisions under the jurisdiction of the Board of County Commissioners shall cooperate with the MWSBE Division and make every reasonable effort, consistent with Board policy, to utilize MWSBEs when available. The MWSBE Director shall coordinate and promote the process by taking active steps to encourage full participation of Certified, capable, and competitive MBE, WBE, and SBE businesses and by keeping staff informed of MWSBE availabilities.
10. The MWSBE Director shall annually evaluate relevant expenditure and contracting data to determine the performance and progress of the MWSBE Program.

F. Special Consideration for MBEs, WBEs and SBEs - For contracts of $100,000 or less, where there is a disparity of 1% or less between the total of the base bid and all recommended alternates of a 100% owned and operated MBE, WBE or SBE and the apparent lowest bid which is from a business that is not a MBE, WBE or SBE, and all other purchasing requirements have been met, the Contract may be awarded to the MBE, WBE or SBE to help achieve Aspirational Targets, where otherwise permissible.

G. Setting and Meeting Aspirational Targets

1. Project Review and Setting Aspirational Targets - The MWSBE Director, a Purchasing representative and an appropriate division or department representative shall review each proposed project or bid to determine the potential for Subcontracting and for utilizing MWSBEs, considering the scope of work, available and capable MWSBEs to potentially perform the work, and opportunities for multiple bids. Such reviews may be held as a group, via e-mail, telephone, etc. Based upon these and other reasonable factors, the MWSBE Director or designee shall determine the recommended Aspirational Targets.

   a) If the recommended Aspirational Target is lower than the applicable participation level(s) identified in Section 16, Table 1:

      i. The MWSBE Director shall notify the County Administrator of the recommendation Aspirational Target and provide reasons for such recommendation.

      ii. The County Administrator shall then advise the Leon County Board of County Commissioners, typically through an e-mail to each Commissioner. Commissioners shall be given five (5) business days to ask the County Administrator to delay the issuance of the Bid/RFP and request an agenda item regarding the recommended Aspirational Target.

      iii. If no Commissioner requests an agenda item regarding the recommended Aspirational Target within the five-business day time period, the recommended Aspirational Target shall stand, and staff is authorized to release the Bid/RFP.

   b) The notification process previously outlined does not apply when the recommended Aspirational Target is equal to or greater than the applicable participation level(s) identified in Section 16, Table 1.

2. Notice to Potential Bidders -

   a) Language regarding the MWSBE Program policy and Aspirational Targets will be included into each bid and request for proposal package specifications to inform prospective Bidders of the requirement to make good faith efforts to utilize MWSBEs, as appropriate to the particular procurement.

   b) Plans and specifications will be made available to the MWSBE Director by the Purchasing Division or originating division for review by potential MWSBE Bidders.

3. Participation Plans (Submitting and Changing) - Bidders shall submit a Participation Plan when the procurement opportunity contains Aspirational Targets. Such Participation Plans shall identify the MBEs, WBEs and SBEs to be utilized, their percentage of utilization, and the Commercially Useful Functions they will be providing, consistent with the commodities or services for which they are Certified to provide.

   a) Unless otherwise approved by the Board, no Bidder that will be Subcontracting will be awarded a bid or proposal that contained Aspirational Targets until the Bidder has provided a Participation Plan detailing the utilization of MWSBEs (as applicable to the Aspirational Targets for the procurement); the Participation Plan has been analyzed by the MWSBE Director; such analysis is provided to the Board through an agenda item; and the proposed Contract is approved by the Board.

4. Good Faith Efforts required Proposing Prime Contractors (including Joint Ventures) to Meet Aspirational Targets

   a) Bidders responding as a Prime Contractor (including Joint Ventures) shall demonstrate that they made Good Faith Efforts to meet Aspirational Targets.

b) All Bidders, including MBEs, WBEs, or SBEs, shall either meet the Aspirational Targets or demonstrate in their bid or RFP response the Good Faith Efforts they made, such as:

i. Advertising for participation by MWSBEs in non-minority and minority publications within the Market Area, including a copy of the advertisement and proof of the date(s) it appeared – or by sending correspondence, no less than ten (10) days prior to the submission deadline, to all MWSBEs referred to the Bidder by the MWSBE Division for the goods and services to be Subcontracted and/or Supplied.

ii. Documentation indicating that the bidding Prime Contractor provided ample time for potential MBE, WBE and SBE Subcontractors to respond to bid opportunities, including a chart outlining the schedule/time frame used to obtain bids from MBE, WBE and SBE Vendors as applicable to the Aspirational Target.

iii. Contacting MBEs, WBEs, and SBE Vendors who provide the services needed for the bid or proposal, including a list of all MWSBEs that were contacted and the method of contact.

iv. Contacting the MWSBE Division for a listing of available MWSBEs who provide the services needed for the bid or proposal, including a list of those MWSBEs who were contacted regarding their participation.

v. Document follow-up telephone calls with potential MWSBE Subcontractors encouraging their participation.

vi. Allowing potential MWSBE Subcontractors to review bid specifications, blueprints and all other bid/RFP related items at no charge to the MWSBEs.

vii. Contacting the MWSBE Division, no less than five (5) business days prior to the bid/RFP deadline, regarding problems they are having in reaching the Aspirational Targets.

viii. Other documentation indicating their Good Faith Efforts to meet the aspirational targets.

c) Prime Contractors will negotiate in good faith with interested MWSBEs, not rejecting a MWSBE as unqualified or unacceptable without sound business reasons based on a thorough investigation of their capabilities. The basis for rejecting any MWSBE deemed unqualified or unacceptable by the Prime Contractor shall be included in the Good Faith Effort documentation. The Prime Contractor shall not impose unrealistic conditions of performance on MWSBEs seeking subcontracting opportunities.

5. Good Faith Committee

a) Should the MWSBE Director determine that a Bidder with Subcontracting and Supplier opportunities has not made Good Faith Efforts to meet the Aspirational Targets the MWSBE Director shall refer the matter to the Good Faith Committee.

b) The Good Faith Committee shall include the County Administrator or designee, serving as Chair, the Purchasing Director or designee, the Chair of the MWSBE Citizens Advisory Committee or designee, and may include others appointed at the discretion of the County Administrator or the County Administrator's designee.

c) The Good Faith Committee shall make a formal determination, based on a simple majority vote, as to whether the proposing Prime Contractor made Good Faith Efforts to reach the Aspirational Targets, with each member of the Good Faith Committee having an equal vote in making such determination.

6. The Participation Plan for a specific project and the Contractor’s commitment to carry out the program shall become a part of the Contract.

7. Joint Ventures - To determine whether the Joint Venture is given credit as such for meeting Aspirational Targets:

   a) The Joint Venture shall demonstrate that at least one partner to the Joint Venture is a MBE, WBE or SBE, as applicable to the Aspirational Target, and that such partner is responsible for a clearly defined portion of the work to be performed, will be performing a Commercially Useful Function under the Contract, and shares in the Ownership, Control, management, responsibilities, risks, and profits of the Joint Venture.

   b) Such demonstration shall be verified by pertinent documents and sworn statements and may be reviewed by the MWSBE Division at the time a bid, proposal, or reply is submitted, or prior to the award of a bid, proposal or Contract.

   c) For the purpose of tentatively awarding credit towards a Bidder meeting Aspirational Targets, the MWSBE Division may consider a proposed partnership, that is not yet legally formed and which appears in all matters except legal formation as a joint venture. However, such partnership shall become a legal Joint Venture organization prior to entering into a Contract and failure to form such legal Joint Venture organization shall result in the loss of such proposed Contract.

   d) The MWSBE Division may award credit towards a Bidder meeting Aspirational Targets a portion of the total dollar amount of a proposed Contract equal to the percentage of the Ownership and Control held by the qualifying MBE, WBE, and SBE partners (as applicable to the Aspirational Targets) in the Contracting Joint Venture.

H. Responsibilities of Persons Seeking Participation as a MBE, WBE or SBE Contractor or Subcontractor

1. Persons seeking to participate as a MBE, WBE or SBE Contractor or Subcontractor shall complete the MWSBE certification process managed by the Leon County MWSBE Director, or assure that they have Certification that is accepted by the MWSBE Division, for the scope of work for which they are proposing to perform.

2. Persons seeking to participate as a MBE, WBE or SBE Contractor or Subcontractor shall attend pre-bid conferences to obtain information and technical assistance on projects and procedures in which they may be interested in bidding, or in which they may be interested in participating as a Subcontractor.

I. Contract Management

1. Changing Subcontractors - A Prime Contractor who determines that an MWSBE named in their bid or proposal submittal is unavailable or cannot perform the work, shall request a change order to modify their Participation Plan.

   a) Such changes require the prior written concurrence of the MSWBE Division, which shall be based on reasonable considerations such as:

      i. The Prime Contractor has provided the MWBSE Division with documentation regarding the current MWSBE's poor work performance and measures the Prime Contractor has taken to improve the MWSBE's performance.

      ii. The Prime Contractor has worked with the MWSBE Division and County staff without success to improve the MWSBE's performance.

   b) The MWSBE Division shall consult with the Prime Contractor and the County's technical staff and project manager prior to approve or disapprove the Prime Contractor's proposed substitution.

   c) Prime Contractors who substitute Subcontracted MWSBEs without the prior written approval by the MWSBE Division may be subject to actions for breach of contract, and dollars spent with the unauthorized MWSBE may not be credited towards meeting the Aspirational Targets, with the Prime Contractor remaining responsible for meeting the Aspirational Targets provided for by the Contract.

2. Monitoring Contracted Utilization and Failure to Meet Contracted Utilization

   a) The MWSBE Division will monitor the level of MWSBE utilization by Prime Contractors. If a Contractor is having difficulties meeting the contractual MWSBE Aspirational Targets, the MWSBE Division will help the Contractor identify additional potential MWSBE sub-contractors and/or suppliers.

   b) If a Contractor's MWSBE participation falls below that provided for in their Contract, then the Contractor may be in breach of their contract. The MWSBE Division shall investigate whether it appears that a breach of contract has occurred. Upon a determination by the MWSBE Director that it appears a breach has occurred, the County Attorney's office will be contacted, and payments under the Contract may be immediately suspended. The County Attorney's office shall be fully involved throughout this process. Based upon guidance from the County Attorney's office, the findings and determination of the MWSBE Director, in conjunction with the County Attorney's office, may be forwarded to the Good Faith Committee for a determination as to whether the Contractor made a Good Faith Effort to comply with the requirements of the Contract, or take other appropriate actions.

3. Suspension - Contractors found in breach of their Contract may be suspended from bidding on and/or participating in any future County contracts for up to three (3) years as provided in Section 15 of the Purchasing Policy.

4. Reporting – Prime Contractors with MWSBE participation shall submit a monthly report, not less frequently than monthly, and in a form and manner prescribed by the MWSBE Division, which may include items, such as the invoices submitted to the County, payments received, and payments made to each MBE, WBE, and SBE as a part of each project.

5. Payments - Contracts and purchase orders shall contain the payment schedule. An MBE, WBE or SBE may seek expedited payment in case of hardship by notifying the MWSBE Director or Purchasing Director, and in such cases, the County may provide expedited payments when determined to be reasonably necessary, provided all work or services have been satisfactorily performed.

6. On-Site Monitoring - The MWSBE Division may perform on-site monitoring of MWSBE utilization on County projects. Monitoring may consist of scheduled or unscheduled project site visits. This does not exclude Contract monitoring expected by other County staff responsible for the project in the performance of their regular duties.

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J. Certification Criteria –

For Certification as a MBE, WBE or SBE, the Applicant must meet all of the following Criteria as noted; businesses may be Certified as a: (1) MBE; (2) WBE; (3) SBE; (4) MBE/SBE; or (5) WBE/SBE:

MBE, WBE and SBE Certification Eligibility Criteria			
	Type of Certification (must meet ALL marked criteria)		
	MBE	WBE	SBE
Majority Owner(s) must be a Minority or Minorities who manage and Control the business. In the case of a publicly owned business, at least 51% of all classes of the stock, which is owned, shall be owned by one or more of such persons.	X		
Majority Owner(s) must be a Woman or Women who manage and Control the business. In the case of a publicly owned business, at least 51% of all classes of the stock, which is owned, shall be owned by one or more of such persons.		X	
Majority Ownership in the business shall not have been transferred to a woman or minority, except by descent or a bona fide sale within the previous 2 years.	X	X	
Majority Owner(s) must reside in Leon, Gadsden, Jefferson, or Wakulla County Florida.	X	X	X
Majority Owner(s) must be a United States citizen or lawfully admitted permanent resident of the United States.	X	X	X
Business must be legally structured either as a corporation, organized under the laws of Florida, or a partnership, sole proprietorship, limited liability, or any other business or professional entity as required by Florida law.	X	X	X
Business must be Independent and not an Affiliate, Front, façade, broker, or pass through.	X	X	X
Business must be a for-profit business concern.	X	X	X
Business must be currently located within the Market Area.	X	X	X
Business must have all licenses required by local, state, and federal law.	X	X	X
Business must currently be licensed and engaging in commercial transactions typical of the field, with customers in the Local Market Area other than state or government agencies, for each specialty area in which Certification is sought. Further, if a Supplier, business must be making sales regularly from goods maintained in stock.	X	X	X
Business must have expertise normally required by the industry for the field for which Certification is sought.	X	X	X
Business must have a net worth no more than $2 million.	X	X	X
Business must employ 50 or fewer full- or part-time employees, including leased employees.	X	X	X
Annual gross receipts on average, over the immediately preceding three (3) year period, shall not exceed: - For businesses performing Construction – $2,000,000/year. - For businesses providing Other Services or Materials & Supplies - $2,000,000/year. - For businesses providing Professional Services – $1,000,000/year.	X	X	X
Business must have been established for a period of one (1) calendar year prior to submitting its application for SBE certification.			X
Business must have a record of satisfactory performance on no less than three (3) projects, in the business area for which it seeks certification, during the past 12 calendar months.			X

K. Certification and Recertification Process

1. Application –

   a. Persons seeking Certification shall complete a Certification Application, which provides the MWSBE Division with information regarding the name and address of the company and its owner(s), the gender/race of the Owner(s), a listing of the type of commodities/services it provides, the Vendor's work/contract history and past earnings, and other relevant information necessary for the determination of Certification eligibility.

   b. Certification Application attachments, such as "Proof of Ownership" with the Applicant's name listed on it, a copy of the applicant's most recent pictured identification also indicating race and gender (if seeking MBE or WBE Certification), the most recent financial statements for the company, as well as the other required documents listed on the Certification Application, shall accompany the completed and notarized Certification Application. Copies of MWSBE Certifications(s) from other governmental agencies shall also be included, where applicable.

2. Application Evaluation Period – The MWSBE Division shall review, evaluate, and make a determination as to whether an Applicant is certifiable within 30 days of receipt of a complete Certification Application, with all applicable attachments.

3. Certification Approvals - If the Applicant is deemed certifiable, they will be notified of their Certification approval in writing through a letter of Certification and a certificate, which indicates the expiration date of their certification.

4. Certification Denials - If an Applicant who has submitted a Certification Application is determined not certifiable based on information provided on the Certification Application, including attachments, or as a result of the MWBSE Division's investigation and research, the Certification Application will be denied. Submission of fraudulent information, by or on the behalf of the Applicant as part of the Certification process, is grounds for Certification denial. The Applicant will then be notified in writing of the denial of their Certification. Such official denial notification shall include notice to the Applicant of their right to appeal their denial and of the appeal process.

5. Appeals of Certification Denials - An Applicant may appeal their Certification denial by presenting written notice of their appeal to the MWSBE Director within 10 business days after the Applicant's receipt of the Certification denial. An appeal of a Certification denial will be heard by the MWSBE Citizen Advisory Committee. Upon receipt of the notice of appeal of a Certification denial, the MWSBE Director shall convene a meeting of the Committee to review the denial of the application for Certification. The Committee shall review all documentation prepared by the MWSBE Division or submitted by the Applicant prior to the time the committee convenes. The Committee shall not receive any new evidence, and may make whatever relevant inquiry necessary to render a decision on the appeal. The Committee shall review the relevant evidence submitted and determine whether the Application for MWSBE Certification meets the specific criteria provided in Policy 96-1. The decision of the Committee shall be upon majority vote of the Committee and shall be based upon competent substantial evidence. Within five (5) business days of the decision of the Committee, the Chairman shall reduce to writing the decision of the Committee, which shall set forth a statement of the relevant facts and application of the Policy to the facts supporting the decision of the Committee.

6. Denied Application May Not Resubmit - Applicants whose request for Certification has been denied by the MWSBE Division shall not be eligible to submit a new Certification Application for six (6) months after the notice of Certification denial.

7. Certification Period - Unless otherwise provided, Certification is valid for two (2) years.

8. Recertification –
    a. MBEs, WBEs and SBEs are required to submit a Certification Application biannually for a review of and potential continuation of the Certification status.
    b. The MWSBE Division will send written notification to the Certified MBE, WBE, or SBE, no later than 60 days prior to the Certification expiration date, along with a Certification Application and instructions for completion and submission.
    c. Certification Applications submitted for recertification consideration shall be received by the MWSBE Division no later than the last effective date of the current Certification. Certification Applications submitted for recertification consideration received after expiration of the current Certification will not be considered, unless the reason for the delay is accepted and approved by the MWBE Division, at which time a one-time extension of their certification not to exceed 30 days may be granted.
    d. Procedures relevant to the review of the Certification Application, Certification Approvals, Certification Denials, Appeals of Certification Denials, and Certification Periods, provided for in this Section, shall be the same for the Applications for recertification as for the initial Certification Application.

9. Notification of Changes – MBEs, WBEs, and SBEs shall notify the MWSBE Division of any changes in the Certified business, during the Certification period, which may impact the Certification (such as a change in Ownership or in the types of services and/or commodities being provided). If such changes occur during the Certification period, the business' Certification status may be reevaluated.

10. Certification Reevaluation - The County reserves the right to reevaluate an MWSBE's Certification at any time during the Certification period, and to rescind Certification if it is found that the business is not certifiable.

11. Certification From Other Agencies - The MWSBE Program may accept MBE, WBE and SBE Certifications from parties to THE MWBE INTER-LOCAL AGREEMENT (such parties currently include the City of Tallahassee and Leon County; however, such parties may change from time to time without notice or revision to this policy), and in accord with the Memorandum of Understanding with the Florida Office of Supplier Diversity. Further, the MWSBE Division reserves the right to review the Certification process and documentation utilized by an outside certifying agency; request clarification or additional information from the certified business; to delay acceptance of certification while it is being reviewed; and to deny certification any time during the Certification period.

12. The MWSBE Division may, based upon the provisions of this policy, determine to approve certifications that only apply to the County procurement process due to the difference in the policies between the County, City of Tallahassee, and the Florida Office of Supplier Diversity.

L. Decertification and Right of Appeal

1. The MWSBE Program reserves the right to revoke Certification at any time such action is deemed reasonably necessary. Grounds for revocation of Certification include, but are not limited to, the following:
    a. Submission of fraudulent information, by or on the behalf of the Applicant for Certification or by or on the behalf of the MBE, WBE or SBE either as part of the Certification process or as part of a procurement or contract process.
    b. Failure to promptly report any change in Ownership or Control of the business.
    c. Failure to promptly report any name, address or telephone number changes of the business.
    d. Failure to respond to requests for information from the MWSBE Division.
    e. Fraudulent representation or participation on County projects or contracts, or breach of contract with the County.
    f. Revocation by a party to the MWBE INTERLOCAL AGREEMENT or the Memorandum of Understanding with the Florida Office of Supplier Diversity.

2. Any business having its Certification revoked by the MWSBE Division shall have the right to appeal such Certification revocation, following the same process as Appeals of Certification Denials.

M. Small Business Enterprise (SBE)

1. SBE Orientation - The County shall conduct periodic meetings to educate SBEs about the program and about general matters relating to participating in County procurement opportunities. The MWSBE Division may require SBEs to attend periodic follow-up meetings, but no more than once every two (2) years. Failure to attend such meetings shall be grounds for decertification for such up to 12 months, as determined appropriate by the MWSBE Division.

2. SBE Graduation - A SBE shall graduate from the SBE Program and is no longer eligible for Certification as a SBE six (6) years after the date of award of the first procurement opportunity made through the SBE program and will no longer be eligible for certification as a SBE. Graduation of an SBE shall not affect the contribution made by the SBE toward satisfaction of an Aspirational Target if the work was identified in a bid or RFP proposed to be performed by the SBE prior to the date of SBE Graduation and the bid or RFP opening date occurred prior to the SBE Graduation date.

3. Reserving Procurement Opportunities for Exclusive Competition Among SBEs - Procurement opportunities may be reserved for exclusive competition among SBEs when:
   a. At least three (3) SBEs, with Certification in the relevant area, are available to compete for the procurement opportunity;
   b. Permissible by law; and,
   c. Such limited competition has been recommended by the appropriate authority as stipulated:

Criteria for Reserving Procurement Opportunities for Exclusive Competition Among SBEs

Business Category	Estimated Procurement Value (Estimated Contract Cost)	Minimum Number of Available SBEs, Certified in Procurement Opportunity Area	Authority that Recommends Reserving Procurement Opportunity for Exclusive Competition Among SBEs
Construction - Prime Contractor	$100,000 or less	Three (3)	[1] Committee Concurrence (MWSBE Director, Purchasing Director and Project Director or Division Director responsible for the project/budgeted expense)
Professional Services	$50,000 or less	Three (3)	[1] Committee Concurrence (MWSBE Director, Purchasing Director and Project Director or Division Director responsible for the project/budgeted expense)
Other Services	$25,000 or less	Three (3)	[1] Committee Concurrence (MWSBE Director, Purchasing Director and Project Director or Division Director responsible for the project/budgeted expense)
Materials & Supplies	$25,000 or less	Three (3)	[1] Committee Concurrence (MWSBE Director, Purchasing Director, Project Director or Division Director responsible for the project/budgeted expense)

[1] Committee Concurrence – If consensus cannot be reached, the County Administrator or his/her designee shall make the final decision. Such agreement between the committee members can be gained via any reasonable means of communication, such as a face-to-meeting, over the phone or via e-mail. Documentation of such concurrence shall be retained with the procurement records.

N. Outreach –

A continuing effort of the County involves identifying SBEs, MBEs, and WBEs capable of providing goods and services and ensuring that staff, through business community interactions, are knowledgeable about and support the MWSBE Program. The MWSBE Division will network with state and local governments, nonprofit organizations, professional and trade organizations and participate in conventions and seminars sponsored and widely attended by small, minority, and women business owners. Staff coordination may include, but is not limited to:

1. Coordination with the user departments on increasing awareness of program policies, directives and program targets and objectives for County staff;

2. Development of an internal education program to promote the awareness of all staff about SBE and MBE, and WBE firms and the commitment to their full participation in its activities.

3. Determine prospective program participants as well as assist them in understanding regulations and the certification process.

4. Develop directories of certified minority, women-owned, and SBEs firms capable of providing services.

5. Assist program participants in understanding and meeting the County's contracting need.

6. Develop promotional campaigns, forums or seminars to inform the small, minority and women-owned business community of the County's needs and its commitment to involve such firms in its contracting activities, along with receiving feedback from the business community.

7. Target appropriate firms for participation in the County's contractor training effort;

8. Identify categories in which firms are underrepresented;

9. Develop special events to meet special needs or concerns including contracting trade fair open houses;

10. Coordinate events with other governmental entities and private and nonprofits organizations.

O. Severability Clause

Each separate provision of this program is deemed independent of all other provisions herein so that if any provision or provisions are declared invalid, all other provisions hereof shall remain valid and in full force and effect.

(Section 16 Adopted September 10, 1991, deleted and replaced by separate policy January 16, 1996, reincorporated July 30, 2002, and replaced in its entirety June 13, 2006)

Section 17 PROCUREMENT FOR FEDERAL GRANT AND AID PROGRAMS

This section supplements Section 11.2, NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS and applies to all Federal grant and aid procurements and contracts to include, but not be limited to the Community Development Block Grant Housing Program, the Federal Highway System Local Agency Program, and any other Federally funded grants or contracts.

A. It is the policy of the Board of County Commissioners to obtain commodities and services efficiently and effectively in free and open competition for the Federal Grant and Aid Programs through the use of sound procurement practices. All County staff and other persons (subgrantees or contractors) with designated responsibility for the administration of Federal Grant award contracts are responsible for ensuring compliance with all applicable federal and state laws and regulations. These include but are not limited to OMB Circular A-102, Attachment O; 24 CFR Part 85 Section 85.36; s. 255.0525, Florida Statutes; s. 287.055, Florida Statutes; s. 290.047, Florida Statutes; Chapter 73C-23, Florida Administrative Code; and, the Purchasing Policy of the Leon County Board of County Commissioners.

B. The County Purchasing Policy shall govern the procurement of commodities and services for the Federal Grant and Aid Programs except as provided in this section.

1. Local Preference Program is not applicable to Federally funded programs.

2. The County's Minority, Women, and Small Business Enterprise Program is not applicable to Federally funded programs.

3. All procurement of commodities or services in excess of $1,000 shall require a written agreement embodying all provisions and conditions thereof.

4. All procurement of commodities or services in excess of $1,000 and less than the threshold amount provided for CATEGORY TWO in s. 287.017, Florida Statutes may be entered only after informal competition based on offers or quotes from not less than three (3) vendors.

5. Publication of public notice for invitations to bid or requests for proposals and notification of the solicitation through distribution to potential bidders or offerors shall be required for all procurement in excess of the threshold amount provided for CATEGORY TWO in s. 287.017, Florida Statutes. The time frames in section 5.08 of this policy shall apply for the required public notice.

6. Except as may otherwise be provided by law, procurement awards shall be made only on the basis of requirements and evaluation factors related to the price or quality of the commodities or services or to the ability of the prospective supplier or contractor to perform under the agreement. In evaluating the ability of a prospective contractor to perform, the County shall at a minimum consider the prospective contractor's record of past performance under similar federal grants.

7. Nothing herein shall limit the County to except from the requirement of competition commodities and services available only from a single source (Section 5.10, Sole Source Purchases) or procurement from another unit of government (Section 5.12, Cooperative Purchasing).

Revised February 7, 2017