Section 5.10 OWNER DIRECT PURCHASES IN PUBLIC WORKS CONTRACTS

A. 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.

B. 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.

[New Section 5.13 – Replaces current Section 5.13 in its entirety]

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, 5.091 or 5.092 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. The Protestor shall 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. 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. The Protestor shall 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. 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 1 percent 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 recover all court costs and charges, but in no event attorney fees, which shall be included in the final order of judgment. Upon payment of such court costs and charges by the Protestor, the bond shall be returned to him. If the Protestor prevails, his bond shall be returned and he shall recover from the County all costs and charges, but in no event attorney fees, lost profits or bid preparation costs, which shall be included in the final order of judgment. In no case will the Protestor or Intervenor be entitled to any costs incurred with the solicitation, including bid preparation costs, lost profits, 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.

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 bid preparation costs, lost profits, 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.

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.

3. Procurement Appeals Board. There is hereby established a Procurement Appeals Board to be composed of a chairperson and two other members. The chairperson and members of the Board shall be appointed by the County Administrator. The term of office of the chairperson and each member 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 for a term of two years, and one member 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. 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.

      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.

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.

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 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 14 PAYMENT TO VENDORS

~~A. Outright Purchases. Payment of invoices shall be made within thirty (30) days of receipt of invoice. All invoices shall be approved by the department or division head, or authorized designee and submitted to the Finance Officer of the Board for payment.~~

~~B. Contractual Purchases. Payment of invoices shall be made in accordance with the contract terms, conditions, and scopes of services being provided.~~

~~C. Prompt Payment Act. All payment to vendors shall also be in accordance with the amended "Prompt Payment Act," Chapter 89-297, Florida Statutes.~~

A. 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.

B. 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 2 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 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 3 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.