

RESOLUTION No. 2002-08

A resolution of the Town of Cinco Bayou adopting a purchasing policy as part of its participation in the Community Development Block Grant (CDBG) program.

WHEREAS, The Town of Cinco Bayou finds it in the best interests of the community to participate in the Community Development Block Grant (CDBG) program as a way to provide improvements needed for the benefit of everyone in the community; and

WHEREAS, adoption of certain plans and policies is required for eligibility for CDBG funding.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CINCO BAYOU, FLORIDA, THAT:

The following plan is adopted as its

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM PURCHASING POLICY INCLUDING THE MINORITY BUSINESS ENTERPRISE POLICY

SECTION 1 PURPOSE

This policy is adopted to assure that commodities and services for the Community Development Block Grant Programs are obtained efficiently and effectively in free and open competition and through the use of sound procurement practices. All Town staff and other persons (subgrantees or contractors) with designated responsibility for the administration of CDBG 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. 287.055, Florida Statutes.

SECTION 2 APPLICATION OF POLICY

This policy shall apply to contracts or agreements for the procurement of all materials, supplies, services, construction and equipment for any Community Development Block Grant Program solicited or entered into after the effective date of this policy.

SECTION 3 PURCHASING DIRECTOR

The CDBG Program Coordinator shall serve as the central purchasing officer (the Town Manager/Clerk) of the Town for all contracts or agreements described in Section 2.

SECTION 4 PURCHASING CATEGORIES; THRESHOLD AMOUNTS

Except as to Sole Source Purchases (Section 4.06) and Cooperative Purchasing (Section 4.07), all purchases and contract awards are to be made subject to the provisions of the appropriate Section according to the following threshold amounts:

- A. Small Purchases (Section 4.02)\$ 1 to \$ 1,000

- B. Purchasing Quotes (Section 4.03).....\$ 1,000 to \$ 5,000
- C. Competitive Sealed Bids/Proposals (Section 4.04 & 4.05).....\$ 5,000 and above

SECTION 4.02 SMALL PURCHASES

The purchase of commodities, equipment and services which cost less than the threshold authorized in Section 4 does not require solicitation of quotes or bids. Small purchases shall be authorized by the Purchasing Officer or his/her designees.

SECTION 4.03 PURCHASING QUOTES

The purchase of goods and services which cost within the range authorized for purchasing quotes in Section 4 shall require competitive quotations from three or more vendors. The quotations shall be obtained by the Purchasing Division and shall be reviewed and awarded by the Purchasing Officer.

SECTION 4.04 COMPETITIVE SEALED BIDDING

- A. Conditions For Use. All contracts for purchases of a single item, services or aggregate in excess of the established base amount for Competitive Sealed Bids/Proposals in Section 4, where price, not qualifications, is the basis for contract award, shall be awarded by competitive sealed bidding.
- 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. No later than five working days prior to the date for receipt of bids, a vendor shall make a written request to the Town for interpretations or corrections of any ambiguity, inconsistency or error which the vendor may discover. All interpretations or corrections will be issued as addenda. The Town will not be responsible for oral clarifications. No negotiations, decisions or actions shall be initiated or executed by the proposer as a result of any discussions with any Town employee prior to the opening of proposals. Only those communications which are in writing from the Town may be considered as a duly authorized expression on the behalf of the Council. Also, only communications from firms or individuals which are in writing and signed will be recognized by the Council as duly authorized expressions on behalf of proposers.
 - (1) Alternate(s). Alternate bids will not be considered unless authorized by and defined in the Special Conditions of the bid specifications.
 - (2) Approved Equivalents. The Town 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 general conditions of the bid.
- C. Public Notice. Public notice shall be by publication in a newspaper of general circulation at least twelve (12) working days prior to bid opening. Notice of the invitation to bid shall give the date, time, and place set forth for the submittal of proposals and opening of bids.
- D. Bid Opening. Bids shall be opened publicly. The Purchasing Officer or his/her designee 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 other such relevant information as may be deemed appropriate by the Purchasing Officer together with the name of each bidder, and all witnesses shall be recorded. The record (Bid Report) and each bid shall be open to public inspection.
- 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. Those criteria that will affect the bid price and 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 are not set forth in the Invitation to Bid, in regulations, or in this policy.
- F. Bid Agenda Item. After evaluation, the Purchasing Officer will prepare a recommendation and shall place the item on the agenda of the Town Council.
- 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. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the Invitations 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 know by clear and convincing evidence that a mistake on a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in the bid price or other provisions of bids prejudicial to the interest of the Town 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 his 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 which 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 Officer.
- H. Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids 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.
- 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 Town 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 the Town. Any requirement which is waived must be documented and kept in the file.
- (1) Notice of Intended Award. The contract shall be awarded by written notice. Every procurement of contractual services shall be evidenced by a written agreement. Notice of the intended award, including rejection of some or all of bids

received, may be given by posting the bid tabulations where the bids were opened, by telephone, by first class mail, or by certified United States mail, return receipt requested, whichever is specified in bid solicitation. A vendor may request, in their bid submittal, a copy of the tabulation sheet to be mailed in a vendor provided, stamped, self-addressed envelope for their record.

(2) Notice of Right to Protest. All notices of decision or intended decisions shall contain the statement: Failure to file a protest within the time prescribed in Section 4.08 of the CDBG Purchasing Policy of the Town shall, constitute a waiver of proceedings under that section of this 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 Town, as determined by the Council. Notice of cancellation shall be sent to all businesses solicited. 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 resolicitation or any future procurement of similar items.

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

- (1) Failure to respond to bid invitation three consecutive times within the last eighteen (18) months period.
- (2) Failure to update the information on file including address, project or service, or business description.
- (3) Failure to perform according to contract provisions.
- (4)

Conviction in a court of law of any criminal offense in connection with the

conducting of business.

- (5) 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.
- (6) Clear and convincing evidence that the vendor has attempted to give a Town employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Town's purchasing activity.
- (7) Failure to execute a Public Entity Crimes Statement as required by Florida Statutes Chapter 287.133(3)(a).

- (8) Other reasons deemed appropriate by the Town.

SECTION 4.05 COMPETITIVE SEALED PROPOSALS

All contracts for purchases of a single item or services or aggregate in excess of the established base amount for Competitive Sealed Bids/Proposals in Section 4, where qualifications, not price, is the basis for contract award, shall be awarded by competitive sealed proposals. All contracts for the procurement of professional architectural, engineering, landscape architectural, and land surveying services will be awarded according to the provisions of Section 4.051. All other contracts required to be awarded by competitive sealed proposals will be awarded according to the provisions of Section 4.052.

SECTION 4.051 PROFESSIONAL ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL, AND LAND SURVEYING SERVICES

- A. Public Announcement. It is the policy of the Town to publicly announce all requirements for professional architectural, engineering, landscape architectural, and land surveying 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 Town may require firms to submit a statement of qualifications, performance data, and other related information for the performance of professional services.
- (1) Scope of Project Requirements. Prior to submission of the request for proposals for professional services an item shall be placed on the agenda for approval by the Town Council indicating the nature and scope of the professional services needed, including but not limited to the following:
- (a) the general purpose of the service or study;
 - (b) the objectives of the study or service;
 - (c) estimated period of time needed for the service or the study;
 - (d) the estimated cost of the service or study;
 - (e) whether the proposed study or service would or would not duplicate any prior or existing study or service;
 - (f) list of current contracts or prior services or studies which are related to the proposed study or services;
 - (g) the desired qualifications, in order of importance, of the person or firm applicable to the scope and nature of the services requested.
- (2) Distribution of Project Requirements. All persons on the Town's vendor list who have indicated an interest in being considered for the performance of such professional services and any other additional parties deemed desirable by the Purchasing Officer shall be notified of the project requirements including a statement of relative importance of each of the requirements. The project requirements shall be accompanied by an Invitation to such persons to submit an indication of interest in performing the required services, and by notification of the date and time when such indications of interest are due. This date shall not be less than 14 calendar days from the date of public notice which the Purchasing Officer shall publish in at least one newspaper of wide general circulation in the region.
- (3) Modification Prohibition. After the publicized submission time and date,

indications of interest shall not be modified or allowed to be modified in any manner except for correcting of clerical errors or other similar minor irregularities as may be allowed by the Selection Committee (defined in Section 4.051B) prior to making its selection of those best qualified.

- (4) 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 Town 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 which provides that the plans are subject to reuse.

B. Selection Committee Membership and Evaluation. Depending on the expected complexity and expense of the professional services to be contracted the Town may determine whether a two member or three member selection committee will best serve the needs of the Council.

- (1) Two Member Committee Composition. Membership of a two-member selection committee shall consist of the Town Clerk and the Mayor or his/her designee.
- (2) Three Member Committee Composition. Membership of a three-member selection committee shall consist of the Town Clerk, the Mayor and a designee of the council and
- (3) Selection Committee Evaluation. 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. Only evaluation of written responses and selected for formal interview may submit additional data. From among those persons evidencing, by timely submission of written responses, an interest in performing the services the Selection Committee shall:
 - (a) prepare an alphabetical list of those persons determined by the Selection Committee to be qualified, interested and available; and
 - (b) designate no less than three persons, unless there were less than three submissions, on the alphabetical list considered by the selection committee to be best qualified to perform the work required.
- (4) Shortlisting. The best qualified respondents shall be based upon the Selection Committee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed. The Selection Committee shall determine qualifications, interest and availability by reviewing the written responses that express an interest in performing the services, and by conducting formal interviews of no less than three selected respondents that are determined to be best qualified based upon the evaluation of written responses. The determinations may be based upon, but not limited to, the following considerations: (a) competence, including technical education and training, experience in the kind of project to be undertaken, availability of adequate personnel, equipment and facilities, the extent of repeat business of the persons, and person to actual cost of previous projects; (b) current work load; (c) financial responsibility; (d) ability to observe and advise whether plans and specifications are being complied with, where applicable; (e) record of professional accomplishments; (f) proximity to the project involved, if applicable; (g) record of performance; and (h) ability to design an approach and work plan to meet the project requirements, where applicable.
- (5) Interview and Council Approval. After conducting the formal interviews, the

Selection Committee shall list those respondents interviewed in order of preference based upon the considerations listed in subsection (4) above. The respondents so listed shall be considered to be the most qualified and 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 Council for approval prior to beginning contract negotiations.

Negotiation sequence shall be based on the order of preference.

- C. Negotiation Staff. Contract negotiations shall be conducted by the Purchasing Officer unless the Mayor directs that negotiations be conducted by a Negotiation Committee.

Negotiation. The Purchasing Officer or the Negotiation Committee shall negotiate a contract with the firm considered to be the most qualified to provide the services at compensation and upon terms which the Purchasing Officer or the Negotiation Committee determines to be fair and reasonable to the Town. In making this decision, the Purchasing Officer or the Negotiation Committee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. As a part of the negotiation, the Purchasing Officer or the Negotiating Committee shall conduct a cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price. Should the Purchasing Officer or the Negotiation Committee 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 Purchasing Officer or the Negotiation Committee shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Purchasing Officer or the Negotiation Committee shall formally terminate negotiations, and shall then undertake negotiations with the third most qualified firm. Should the Purchasing Officer or the Negotiation Committee be unable to negotiate a satisfactory contract with any of the selected firms, the selection shall select additional firms in order of their competence and qualifications, and the Purchasing Officer or the negotiation Committee shall continue negotiations in accordance with this selection until an agreement is reached or until a determination has been made not to contract for services.

SECTION 4.052 OTHER COMPETITIVE SEALED PROPOSALS (non-287.055 services)

- A. Conditions for use. All contracts required by Section 5.05 to be awarded by competitive sealed proposals that are not for the procurement of professional architectural, engineering, landscape architectural, and land surveying services, will be awarded according to the provisions of this section.
- 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 4.051.
- C. Council Approval. Proposals anticipated to exceed the threshold established in Section 4 for Competitive Sealed Proposals shall be approved by the Town prior to solicitation.
- D. Public Notice. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in subsection 4.04C of this policy for competitive sealed bidding.
- E. Evaluation Factors. The Request for Proposals shall state the relative importance of criteria outlined in the scope of services.

- F. Proposal Cancellation or Postponement. The Purchasing Officer may, prior to a proposal opening, elect to cancel or postpone the date and/or time for proposal opening or submission.
- G. Revisions and Discussions with Responsible Offerors. As provided in the request for proposals, and under regulations promulgated by the Council of the Town, 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 proposals and make a written recommendation of award to the Town Council. As a part of the recommendation, the Purchasing Officer shall conduct a cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price.
- H. Award. Award shall be made by the Town Council to the lowest responsible offeror whose proposal is determined in writing to be the most advantageous to the Town, 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 is not included in the Request for Proposal.

SECTION 4.06 SOLE SOURCE PURCHASES

- A. Sole Source Certification. A contract may be awarded for a supply, service, material, equipment or construction item(s) without competition when the Purchasing Officer with the concurrence of the Town Clerk, 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. When a purchase exceeds five thousand dollars (\$5,000), the item will be placed on the agenda for Council approval and clarification that the vendor has been determined to be a sole source. When a purchase exceeds (\$25,000) it will require prior DCA approval.
- B. Additional Purchases From Certified Sole Source. The Purchasing Officer may 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 4.07 COOPERATIVE PURCHASING

- A. State Contracts. The Purchasing Officer is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the respective state contracts of the Department of General Services, subject otherwise to the requirements of this policy.
- B. Other Governmental Units. The Purchasing Officer shall have the authority to join with other units of government in cooperative purchasing ventures when the best interest of the Town would be served thereby, and the same is in accordance with this policy and with Town and State law.

SECTION 4.08 BID PROTEST

- A. Right to Protest. Any actual prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award or contract may protest to the Town Council. Protestors shall seek resolution of their complaints initially with the Purchasing Officer and secondly with the Town Manager/Clerk prior to protesting to the Town Council.
- B. Filing a Protest. Any person who is effected adversely by the decision or intended decision of the Town shall file with the Purchasing Officer a notice of protest in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of intended decision and file a formal written protest within 10 calendar days after the date he/she filed the notice of protest. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this Section. A written protest is filed with the Town when it is delivered to and received in the office of the Purchasing Officer.
 - (1) The notice of protest shall contain at a minimum: the name of the bidder; the bidder's address and phone number; the name of the bidder'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 protestant and the solicitation involved; include a plain, clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the protestant deems applicable to such grounds; and specifically request the relief to which the protestant deems himself entitled by application of such authorities to such grounds.
- C. Settlement and Resolution. The Purchasing Officer shall, within 14 days of the formal written protest, attempt to resolve the protest prior to any proceedings arising from the position. Provided, however, if such settlement will have the effect of determining a substantial interest of another party or business, such settlement must be reached in the course of the proceedings provided herein.
- D. Protest Proceedings. If the protest cannot be resolved by mutual agreement, the Purchasing Officer shall conduct or designate another to conduct a protest proceeding pursuant to the following procedures.
 - (1) Protest Proceeding Procedures
 - (a) The presiding officer shall give reasonable notice to all substantially affected persons of businesses. Otherwise petitions to intervene will be considered on their merits as received.
 - (b) At or prior to the protest proceeding, the protestant may submit any arguments which he/she deems relevant to the issues raised.
 - (c) In the proceeding, the protestant, or his representative or counsel, may also make an oral presentation of his evidence and arguments. However, neither direct nor cross examination of witness shall be permitted, although the presiding officer may make whatever inquiries he/she deems pertinent to a determination of the protest.
 - (d) The judicial rules of evidence shall not apply and the presiding officer shall base his/her decision on such information given in the course of the proceeding upon which reasonable prudent persons rely in the conduct of their affairs.
 - (e) Within seven (7) working days of the conclusion of the proceeding, the presiding

officer shall render a decision which sets forth the terms and conditions of any settlement reached. Such decision of the presiding officer shall be conclusive as to the recommendation to the Town Council.

- (f) Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.
 - (2) Intervenor. The participation of intervenors shall be governed by the terms of the order issued in response to a petition to intervene.
 - (3) Time Limits. The time limits in which protests must be filed as provided herein may be altered by specific provisions in the invitation for bids or request for proposals documents.
 - (4) Entitlement to Costs. In no case will the protesting bidder or offeror be entitled to any costs incurred with the solicitation, including bid preparation costs and attorney's fees.
- E. Stay of Procurement During Protests. In the event of a timely protest under Subsection A of this Section, the Purchasing Officer shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or unless the Town Council makes a determination that the award of a contract without delay is necessary to protect the substantial interests of the Town.

SECTION 4.09 CONTRACT CLAIMS

- A. Authority of the Purchasing Officer to Settle Bid Protests and Contract Claims. The Purchasing Officer is authorized to settle any protest regarding the solicitation or award of a Town contract, or any claim arising out of the performance of a Town, prior to an appeal to the Town Council or the commencement of an action in a court of competent jurisdiction of \$1,000.00 or greater in value without the prior approval of the Town Council.
- B. Decision of the Purchasing Officer. All claims by a contractor against the Town relating to a contract, except bid protest, shall be submitted in writing to the Purchasing Officer for a decision. The contractor may request a conference with the Purchasing Officer on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
- C. Notice to the Contractor of the Purchasing Officer's Decision. The decision of the Purchasing Officer shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his appeal rights under Subsection D of this Section.
- D. Finality of the Purchasing Officer Decision; Contractor's Right to Appeal. The Purchasing Officer's decision shall be final and conclusive unless, within ten calendar days from the date of receipt of the decision, the contractor file a notice of appeal with the Town Council.
- E. Failure to Render Timely Decision. If the Purchasing Officer does not issue a written decision regarding any contract controversy within fourteen calendar days after receipt of a written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had

been issued.

SECTION 4.10 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 Officer after consultation with the Town 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 contract, the Purchasing Officer after consultation with the Town 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 Officer after consultation with the Town 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 Town; or
 - (b) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonable incurred under the contract plus a reasonable profit, but excluding attorney's fees, prior to termination; 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 interest of the Town.

SECTION 5 CONTRACT ADMINISTRATION

SECTION 5.1 CONTRACT PROVISIONS

- A. Standard Contract Clauses and Their Modification. The Town after consultation with the Town Attorney, may establish standard contract clauses for use in Town contracts. However, the Purchasing Officer may, upon consultation with the Town Attorney, vary any such standard contract clauses for any particular contract.
- B. Contract Clauses. All Town contracts for supplies, services and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Officer after consultation with the Town Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects:
 - (1) the unilateral right of the Town to order, in writing, changes in the work within the scope of the contract;
 - (2) the unilateral right of the Town 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 working 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 Town;
- (9) suspension of work on a construction project ordered by the Town;
- (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; or
 - (c) when the parties have otherwise agreed with respect to the risk of differing site conditions;
- (11) value engineering proposals;
- (12) remedies;
- (13) access to records/retention records;
- (14) environmental compliance; and
- (15) prohibition against contempt fees
- (16) insurance to be provided by contractor covering employee, property damage, liability and other claims, with requirements of certificates of insurance and cancellation clauses.
- (17) bonding requirements as set by the Town Council
- (18) causes of and authorization for suspension of contract for improper contractor activity.

SECTION 5.2 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 Town:
 - (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 Town;
 - (4) in such other manner as the contracting parties may mutually agree;
 - (5) in the absence of agreement by the parties, by a unilateral determination by the Town of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the Town, 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 5.3 CHANGE ORDERS/CONTRACT AMENDMENTS

Change orders and contract amendments, which provide for the alteration of the provisions of a contract may be approved by an appropriate person based upon the dollar value of the change or amendment. The purchasing categories thresholds designated in Sections 4.01 shall govern the appropriate level of approval.

SECTION 5.4 ASSIGNMENT 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 Town nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of the Town.

SECTION 5.5 RIGHT TO INSPECT PLANT

The Town 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 the Town. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving the Town.

SECTION 6 RIGHTS OF TOWN COUNCIL

Nothing in this Policy shall be deemed to abrogate, annul, or limit the right of the Council, in the best interests of the Town, to reject all bids received in response to a request, to determine in its sole discretion the responsiveness and responsibility of any bidder, 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 desirable for the public good.

SECTION 7 TOWN PROCUREMENT RECORDS

- A. Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the Town in a contract file.
- B. Retention of Procurement Records. All procurement records shall be retained and disposed of by the Town in accordance with records retention guidelines and schedules established by the State of Florida.

SECTION 8 SPECIFICATIONS

SECTION 8.1 MAXIMUM PRACTICABLE COMPETITION

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

SECTION 8.2 USE OF BRAND NAME OR EQUIVALENT SPECIFICATIONS

- A. Use. Brand name or equivalent specifications may be used when the Town 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 Town 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 Town's best interest.
- 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 the substantially equivalent products to those designated may be considered for award.
- C. Required Characteristics. The 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 must include in their bid submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purpose only.

SECTION 8.3 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 Town 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 4.10, Sole Source Purchases.

SECTION 9 ETHICS IN PUBLIC CONTRACTING

SECTION 9.1 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 9.2 EMPLOYEE CONFLICT OF INTEREST

- A. Participation. It shall be unethical for any Town employee, officer or agent to participate directly or indirectly in a procurement or administration of a contract. A conflict of interest would arise when:
- (1) the Town employee, officer or agent;
 - (2) any member of his immediate family;
 - (3) his or her partner; or
 - (4) an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.
- B. Blind Trust. A Town employee, officer or agent or any member of their 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 9.3 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

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

SECTION 9.4 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 9.5 GRATUITIES AND KICKBACKS

- A. Gratuities. It shall be unethical for any person to offer, give, or agree to give any Town employee, officer or agent or for any Town employee, officer or agent to solicit, demand, accept, or agree to accept from another, 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 requests, influencing the content of any specification or procurement standard rendering of advise, 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 behalf or 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 therefor.

SECTION 9.6 SANCTIONS

- A. Employee Sanctions. Upon violation of the ethical standards by an employee officer or agent the Town, or other appropriate authority may:
 - (1) impose one or more appropriate disciplinary actions as defined in the Town Personnel rules and Regulations, up to and including termination of employment; and
 - (2) may request investigation and prosecution.
- B. Non-employee Sanctions. The Council 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 9.7 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 Town employee or non-employee may be recovered from both Town employee and non-employee.
- B. Recovery of Kickbacks by the Town. Upon 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 thereunder, it shall be conclusively presumed that the amount thereof was included in the priced of the subcontract or order and ultimately borne by the Town 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 10 FEDERAL POLICY NOTICE

SECTION 10.1 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, than 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 10.2 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 similar notice to all of its subcontractors.

SECTION 11 PAYMENT TO VENDORS

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

SECTION 12 MINORITY BUSINESS ENTERPRISES PARTICIPATION PROGRAM

- A. Purpose and Scope. The purpose of the Minority Business Enterprise Program is to enhance the participation of qualified minority and women-owned businesses in providing goods and services and construction contracts required by the Town Council. This program describes procedures to accomplish this purpose and to monitor and evaluate progress. All Departments and Divisions under the jurisdiction of the Town Council are responsible for implementing this program.

- B. Policy Statement.

- (1) It is the policy goal of the Town that two (2%) of the council approved procurement as contained with both operating and capital improvement budgets (exclusive of in-house services and construction) shall be identified and let through the competitive bid process to minority and women businesses or persons. The program is based on an in-depth evaluation of all actual as well as projected procurement (CIPS, equipment, commodities, and services) and on the availability of minority and women owned businesses in the market place. Procurement identified to establish a base for this program are not limited to those items only. This evaluation is the main factor in building a realistic program with attainable targets.
- (2) All departments and divisions under the jurisdiction of the Town Council are responsible for implementing this program and for making every reasonable effort to utilize MBEs when opportunities are available. The Purchasing Officer will take the lead role in this process by taking active steps to encourage minority or women owned businesses.
- (3) Regarding the implementation of this policy, it is the Council's intent to foster economic development in the Town's area by establishing its MBE goals based on availability of minority and women-owned businesses located within the Town. This is no way intended to limit or restrict competition. Rather, availability of area

companies will be used to guide MBE goals. Such geographical preference may be adjusted, amended or repealed by the Town Council, with or without a public hearing, as deemed necessary.

- C. Definition. Minority Business Enterprise (MBE) as used herein, means a business that is owned and controlled at least 51% by one or more minority persons (MBE) or by one or more women (WBE) and whose management and daily operations are controlled by one or more such persons.
- D. Administrative Responsibilities. The Purchasing Officer is responsible for the coordination of the Minority Business Enterprise Program and registration.

- (1) Capital Improvement Projects

- (a) Review

The Purchasing Officer and an appropriate department representative shall review each proposed project or bid to determine potential for utilization of MBE/WBEs availability of capable MBE/WBE in the area in relation to the scope of the bid package and considers how a project might be broken down into sub-bids.

- (b) Pre-Bid Activity

- (1) Language regarding the Minority Business Enterprise Program will be inserted into bid specifications to assure that prospective bidders are aware of a requirement to make good faith efforts to utilize MBE/WBEs.
 - (2) Registered MBE/WBEs, the Minority Contractors Association and other organizations for minority and women owned businesses will be notified in writing regarding pre-bid conferences where information on project scope and specifications will be presented, along with other types of technical assistance.
 - (3) Available plans and specifications will be to MBE/WBE associations along with any special instructions on how to pursue bids.
 - (4) Majority (prime) contractors on a bid list will be sent a letter outlining the Minority Business Enterprise Program procedures, the supportive documentation required for submittal with their bid, and a list of MBE/WBE contractors on the bid list.
 - (5) No contractor will be awarded a bid until the contractor has provided specific detailed documentation on how MBE/WBEs will be utilized, and such a plan is approved by the Council.
 - (6) The MBE/WBE participation plan for a specific project and the contractor commitment to carry out the program will become a part of the contract awarded by the Town. Failure to keep these commitments will be deemed noncompliance with the contract and may result in a breach of contract.

- (2) Contractor Responsibilities

- (a) Contractors must indicate all MBE/WBEs contracted for quotes regarding a particular scope of work and submit a completed "Intent to Perform" sheet containing information and documentation obtained from each MBE/WBEs.
 - (b) A contractor who determines that a MBE/WBEs, names in the bid

submittal, is unavailable or cannot perform will request approval from the Purchasing Officer to name an acceptable alternate. Such requests will be approved when adequate documentation of cause for the change is presented by the contractor.

- (c) A contractor's MBE/WBE plan will utilize MBE/WBEs to perform commercially useful functions in the work bid. A MBE/WBE is performing a commercially useful function when it is responsible for the management and performance of a distinct element of the total work.
- (d) Contractors are required to make good faith efforts to obtain MBE/WBE participation when so stipulated by bid specifications and/or contracts. If these efforts are unsuccessful, the contractor will submit a non-availability or refusal to participate and will request waiver of MBE/WBE participation.
- (e) The contractor who is the successful bidder will attend pre-construction conferences with appropriate Town representatives to review the project scope and the MBE/WBE utilization plan.
- (f) The contractor who is the successful bidder must request a change order for any modification to the MBE/WBE plan. Change orders require Council approval and are contingent on contractor documentation of MBE/WBE involvement in the change requested and documentation of cause for the change.

(3) WBE/MBE Contractor's Responsibilities

- (a) MBEs/WBEs must register with the Purchasing Officer in order to participate in the Minority Business Enterprise Program
- (b) MBEs/WBEs should attend pre-construction conferences to obtain information and technical assistance on projects and bid procedures in which they (MBE/WBEs) have submitted bids.

(4) Joint Venture Responsibilities

- (a) All joint ventures between minority and non-minority contractors must meet the "joint venture" definition included in this Policy.
- (b) The use by MBE/WBEs or prime contractors of "minority fronts" or other fraudulent practices which subvert the true meaning and spirit of the Minority Business Enterprise Program, will not be tolerated and may result in termination of participation.
- (c) A joint venture consisting of minority and non-minority business enterprises will be credited with MBE/WBE participation on the basis of the percentages of the dollar amount of the work to be performed by the MBE/WBEs.
- (d) Contracts subject to this policy shall contain provisions stating that liquidated damages may be assessed against the general contractor and/or the MBE/WBE firm for violations of this policy n MBE/WBE specifications in the contract(s). Such liquidated damage provisions shall be in a form approved by the Council.

E. Fulfilling MBE/WBE Participation Requirements

For the purpose of this policy, a general contractor may utilize the services of a

MBE/WBE subcontractor, manufacturer, and/or supplier in estimating and satisfying the scope of work, provided that written contract/agreement is executed between the general contractor and the subcontractor, manufacturer, and/or the supplier.

F. Payment

- (1) Payment will be expedited by the Council within thirty (30) days upon completion and acceptance of the project. Special consideration may be given to hardship cases upon notification by MBE/WBEs.
- (2) The Town will provide work progress payments to all businesses at the completion and subsequent acceptance by Council representatives within various stages of a particular project.

G. Waiver of Bid Bond Requirements

The Council may, at its discretion, waive any of the requirements of this Section when it is determined to be in the best interest of the Town.

H. Bid List

A bid list for the purpose of bid solicitations shall be maintained by the Town. The list shall consist of firms that apply.

- (1) The Town may remove firms from the bid list for any of the following reasons:
 - (a) consistent failure to respond to bid invitations (three (3) consecutive instances) within the last eighteen month period; or
 - (b) failure to update the information on file including address, product or service description or business description.
- (2) The Town may remove firms from the bid list for the following reasons:
 - (a) failure to perform according to contract provisions;
 - (b) conviction in a court of law of any criminal offense in connection with the conduct of business;
 - (c) clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals or awarding of contracts;
 - (d) clear and convincing evidence that the vendor has attempted to give a Council employee, officer or agent a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Council's purchasing activity;
 - (e) violation or circumvention of the Minority Business Enterprise Program; or
 - (f) other reasons deemed appropriate by the Town Council.
- (3) This policy is consistent with and subordinate to the Town Purchasing Policy. Wherever conflicts may exist, the provision in the Purchasing Policy will prevail.

J. Reporting

The Purchasing Officer or appropriate person will report, at least annually, to the Council on the status of the Minority Business Enterprise Program. Records will be maintained reflecting participation of local minority and women owned businesses and shall be reported.

K. Severability Clause

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

APPROVED:

Sara Carroll, Mayor

ATTEST:

Nell Webb, Town Manager/Clerk