

Chapter 46

FINANCE*

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***Cross references**—Any ordinance promising or guaranteeing the payment of money for the county, or authorizing the issuance of any bonds of the county or any evidence of the county's indebtedness, or contract or obligation assumed by the county saved from repeal, pt. I, § 1-10(a)(1); any ordinance making any appropriation saved from repeal, pt. I, § 1-10(a)(4); any ordinance granting ad valorem tax exemptions for specific property saved from repeal, pt. I, § 1-10(a)(5); any ordinance levying or imposing taxes not codified in this Code saved from repeal, pt. I, § 1-10(a)(7); any ordinance providing for local services, special districts or improvements and assessing taxes or other charge therefor saved from repeal, pt. I, § 1-10(a)(9); any ordinance establishing any fee, charge, deposit or other payment saved from repeal, pt. I, § 1-10(a)(15); administration, pt. I, ch. 2; taxation, pt. I, ch. 90.

State law references—County depositories, F.S. ch. 136; financial matters, F.S. ch. 218; county public money, F.S. ch. 219.

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ARTICLE I. IN GENERAL

Sec. 46-1. Borrowing of money authorized; repayment.

(a) The board of county commissioners is authorized to borrow money for any lawful county purpose, and pay interest thereon.

(b) The board of county commissioners is authorized to pledge ad valorem property taxes, which are not otherwise lawfully pledged or encumbered, for a period of time not to exceed one year to repay money borrowed for any lawful county purpose, and payment of interest thereon.

(c) The board of county commissioners is authorized to pledge non-ad valorem property tax revenues which are not otherwise lawfully pledged or encumbered, to repay money borrowed for any lawful county purpose, and interest thereon without limitation of time for repayment thereof.

(d) The board of county commissioners is authorized to issue certificates or other instruments or evidence of indebtedness required to accomplish the purposes of this section.

(Code 1985, § 1-14-2)

State law references—County bonds, F.S. ch. 30; bonds, Fla. Const. Art. VII, § 12.

Sec. 46-2. Transfer of funds from contingency accounts.

(a) Monies in the reserve for contingency accounts in the general fund, transportation fund and the revenue-sharing trust fund may be transferred by the board of county commissioners only upon four-fifths vote of the board of county commissioners and only after the following three findings are made:

- (1) The expenditure of funds is necessary and cannot be delayed until the following year;
- (2) The expenditure of funds was unanticipated; and
- (3) There are no funds available for the expenditure from another source.

(b) Monies in the reserve for contingency accounts in the general fund, the transportation fund and the revenue-sharing trust fund shall be handled in accordance with the provisions of law. (Code 1985, § 1-14-3)

Sec. 46-3. Sale of surplus county property by internet auction.

(a) Where the board of county commissioners determines that it is in the best interest of the county to sell and convey its surplus real or personal property, the board of county commissioners may offer the property for sale by internet auction. The internet auction shall be conducted on a website maintained by the county or a company offering internet auction services selected by a competitive process in accordance with current purchasing policy and procedures.

(b) Internet auction websites used for the sale of county surplus property must allow the county exclusive control of the terms, conditions and specifications of the auction of county surplus property (including the ability to post bid specifications and contracts that the successful bidder will be required to execute), the conduct of the auction, and the qualifications of internet bidders.

(c) Except as provided below, internet auctions shall be conducted in substantial accordance with the procedures found in F.S. § 125.35(1) and other applicable county ordinances:

- (1) Surplus property shall be advertised for sale on the internet auction website for a minimum of six days before bidding commences. Newspaper advertisements shall not be required.
- (2) Bidding shall be allowed to continue for a minimum of six days. The duration of the advertisement and bidding period shall be posted on the website by the county along with all terms, conditions, and specifications for the sale, qualifications for bidders, and any contract that the successful bidder may be required to execute after the close of bidding.
- (3) Sealed bids shall not be required. Open bidding may be used; provided, however,

that bidding is allowed to continue after the advertised close of bidding until the frequency of bids falls below a threshold advertised with the close of bidding (e.g., bids will continue to be accepted until the latter of 6:00 p.m., June 1, 2009, or such subsequent time and date when no further bids are received for more than two minutes).

- (4) At the conclusion of bidding, the highest apparent bidder shall be notified by email.
- (5) Bid deposits may not be required at the time of the bid. However, if bid deposits are not required at the time of the bid, bid deposits shall be paid directly to the County by the successful bidder within 36 hours of transmission of the e-mail notice to the successful bidder. Failure to pay the bid deposit to the county within 36 hours of transmission of the e-mail notice to the successful bidder shall void the bid, and the county administrator or designee shall notify the next highest bidder that they are the successful bidder.

(d) Disposition of real property shall be subject to the county's governing comprehensive plan and zoning ordinances.

(Ord. No. 2009-17, §§ 1—4, 6-18-2009)

Secs. 46-4—46-40. Reserved.

ARTICLE II. PURCHASES AND CONTRACTS

DIVISION 1. GENERALLY

Sec. 46-41. Short title.

The provisions of this article shall be known and cited as the county purchasing ordinance. (Code 1985, § 1-14-19(a); Ord. No. 98-48, 10-27-1998)

Sec. 46-42. General purpose.

(a) The purpose of this article is to place the county's purchasing function under a centralized system which will enable the county to:

- (1) Establish policies governing the purchase of goods and services;

- (2) Provide for fair and equitable treatment for all persons who do business with the county;
- (3) Encourage and promote equal opportunity for all persons doing business with the county;
- (4) Obtain goods and services of satisfactory quality and quantity at reasonable cost for the county; and
- (5) Continue the development of procurement policies and procedures through the promulgation of policies and procedures of purchasing in accordance with the provisions of this article.

(b) The authority granted under this article shall not include fundamental policy decisions regarding the county's purchasing functions and procedures. These powers, including the determination of the total funds to be spent pursuant to this article by the designated departments and the setting aside of those funds, shall remain solely with the board of county commissioners and are not and shall not be delegated. Departments may not request procurements beyond the limitations imposed in the county's budgetary process.

(Code 1985, § 1-14-19(b); Ord. No. 98-48, 10-27-1998)

Sec. 46-43. Requirement of good faith.

The provisions of this article require all parties involved in the development, performance, or administration of purchasing contracts of the board of county commissioners to act in good faith.

(Code 1985, § 1-14-19(c); Ord. No. 98-48, 10-27-1998)

Sec. 46-44. Application; exemptions.

The provisions of this article shall apply to every purchase by the board of county commissioners from county funds, including state and federal assistance monies, except as otherwise specified by law. All expenditures of county funds

will require the issuance of a purchase order contract and be subject to the bid requirements of this article with the exception of the following:

- (1) Agreements between the board of county commissioners and nonprofit organizations, the federal government or other state or local governments including the transfer, sale or exchange of goods and/or services.
 - (2) Purchases by the clerk of the circuit court, sheriff, supervisor of elections, property appraiser, state attorney, public defender, tax collector, county civil service board, county human relations commission, and such other county entities as may be designated from time to time by the board of county commissioners.
 - (3) Goods and/or services received by grant, gift, or bequest.
 - (4) Any item defined as a direct payment voucher.
 - (5) Payroll and payroll related deductions.
 - (6) Awarded bids by local, state, or national government agencies, government cooperative purchasing organizations or purchasing associations.
 - (7) Purchases from the state or U.S. General Services Administration Contracts.
 - (8) Sole source goods and services.
 - (9) Awarded bids by nonprofit associations so long as such bids are obtained through the competitive procurement process.
- (Code 1985, § 1-14-19(d); Ord. No. 98-48, 10-27-1998; Ord. No. 2001-9, § 1, 3-1-2001)

Sec. 46-45. Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Addendum means additional directions or modifications during the county procurement process to a solicitation which are issued as separate advisory document after issuance of such solicitation by the purchasing manager.

Administrator means the county administrator.

Agreement means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing, usage of trade, or course of performance. Whether an agreement has legal consequences is determined by the provisions of the uniform commercial code of the state, if applicable, otherwise, by the law of contracts.

Amendment means the method of changing the terms, conditions, or requirements of a contract or agreement beyond what is specifically provided for in that contract or agreement. All amendments shall be approved with equal dignity and formality as the original contract signed by the individuals holding the positions of the original signatories; provided however, that any amendment which causes a contract expenditure to exceed \$50,000.00 shall be approved by the board of county commissioners.

Bid means a formal price offer by a vendor to the county to furnish specific goods and/or services in response to an invitation for bids, request for quotation or a multi-step bidding procedure.

Board means the board of county commissioners of the county.

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

Business days means working days (Monday through Friday) excluding weekends and any holidays observed by the board of county commissioners.

Capital improvement project means any public improvement which the county undertakes including the construction or reconstruction in whole or in part of any building, road, highway, street improvements, plant, structure, or facility necessary in carrying out the functions of the county government.

Change order means a written order amending a purchase order to correct errors, omissions, or discrepancies in it, to cover acceptable cost overruns and freight costs, to incorporate require-

ments to expand or reduce the scope of goods or services ordered, or to direct other changes in contract execution to meet unforeseen field, emergency, climatic, regulatory, or market conditions.

Construction means the process, usually requiring the professional services of an architect and/or engineer, in the building, altering, repairing, improving, or demolishing of any structure or building, or other improvements of any kind to any real property.

Consultant's Competitive Negotiations Act (CCNA) is the official name for F.S. § 287.055, relating to the procurement of architectural, engineering (including testing), landscape architecture, and registered land surveying services. These services shall be procured by letters of interest and competitive selection and negotiation, determined by the purchasing manager.

Contract means:

- (1) A deliberate verbal or written agreement between two or more competent parties to perform or not perform a specific act or acts;
- (2) Any type of agreement regardless of what it is called for the procurement or disposal of supplies, services or construction.

Contract administrator means the ranking managerial employee of the county requesting contractual items or services, or an employee expressly designated as such by the county administrator. The contract administrator has the responsibility to ensure that the provisions of a contract are complied with by both the county and the contractor.

Contract modification means any written alteration in specifications, delivery point, rate of delivery, period of performance, brand or model, price, quantity, or other provisions of a contract agreed to by the parties to that contract; such modification if not provided for in the original agreement shall be effected by formal amendment as defined herein.

Contractor means any person having a contract with the county.

Cooperative purchasing means a procurement conducted by or on behalf of more than one public procurement unit.

County means the board of county commissioners or any of its authorized representatives pursuant to ordinance, resolution, or administrative code.

Debarment means the exclusion for cause of a vendor or contractor from bidding and/or doing business with the county.

Department (see *Operating unit*).

Department head/director means any person designated by the county administrator to hold a superior position with all authorities associated with the highest level position within an operating unit, i.e., chief, bureau chief, manager, director.

Design-build firm means a partnership, corporation, or other legal entity which:

- (1) Is certified under F.S. § 489.119, to engage in contracting through a certified or registered building contractor as the qualifying agent; or
- (2) Is certified under F.S. § 471.023, to practice engineering; certified under F.S. § 481.219, to practice or to offer to practice architecture; or certified under F.S. § 481.319, to practice or to offer to practice landscape architecture.

Design-build contract means a single contract with a design-build firm for the design and construction of a public construction project.

Design-criteria package means concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design-criteria package is to furnish sufficient information so as to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package shall specify such performance-based criteria for the public construction project, including, but not limited to, the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual

design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions of utilities, stormwater retention and disposal, and parking requirements, as may be applicable to the project.

Design criteria professional means a firm who holds a current certificate of registration under F.S. ch. 481 to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under F.S. ch. 471 to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architecture services, or engineering services in connection with the preparation of the design criteria package.

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

Direct payment voucher means the method of payment for certain approved transactions for which there is no competitive purchasing function; and the using agency may make a request for payment directly to accounts payable without processing the transaction through the office of purchasing. Direct payment vouchers require all the necessary approvals and signatures as a requisition. Only the following transactions are approved for payment using a direct payment voucher: Debt-related expenses, mileage reimbursements, towing, forensic services, witness expenses, storage expenses, copies of records, transcripts, child support payments, housing assistance payments, payments issued to constitutional officers, indigent medical payments, indigent burials, inmate medical services, instructor fees, medical insurance refunds (personnel only), memberships (must be on approved membership list), outside counsel, other legal services, including paralegal services, expert witnesses, and court reporters, all types of taxes, assessments, fees, permits, utility payments, deposits, postage (U.S. Post Office only), pre-approved interview and/or moving expenses (personnel only), refunds on overpayment, tag and title fees, taxes, parking violations, risk management claims settlements, subscriptions to and legal advertisements in newspaper and periodicals, tax deed application expenses, tuition, lab fees, books required course materials to approved

schools (registration forms required), purchases less than \$5,000.00 (subject to the restriction that no purchase shall be artificially divided so as to constitute a purchase under \$5,000.00), and payments made through approved purchase card agreements.

Discount-from-list contracts mean those contracts whereby price is determined by applying a percentage discount from an established catalog price. This type of contract is only to be used when it is determined by the purchasing manager that this contracting methodology is in the best interest of the county.

Emergency purchases means those procurements which shall be exempted from the mandatory bid requirements of this article in the event of a state of emergency, because the circumstances of the delay incident in complying with such requirements would be detrimental to the health, safety and welfare of the citizens of the county; such emergencies shall include, but are not limited to, war, declared or undeclared; insurrection; hurricane; flood; tornadoes or any other form of disaster or unforeseen circumstances threatening destruction of life or damage to property. This exemption shall be in effect through any such circumstances, including the clean up and repair to property period following such an event.

Employee means an individual of a governmental body of the county government under the control of the board of county commissioners who is drawing a salary or wages from the board.

Established catalog price means the price included in a catalog, price list, or schedule, which:

- (1) Is regularly maintained by a manufacturer or contractor; or
- (2) Is either published or otherwise available for inspection by customers; and
- (3) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

Goods means any tangible personal property other than services or real property.

Governmental body means any division, department, separate office, commission, council, board, bureau or committee.

Invitation to bid means:

- (1) The solicitation document used for competitive sealed bidding for the purchase of goods and/or services;
- (2) All documents, whether attached or incorporated by reference, utilized for soliciting bids.

Invitation to negotiate (ITN) means a written solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. Evaluation of the negotiation is based on prior established criteria, which may include, but may or may not be totally limited to price.

Item means a product, material or service.

Mandatory bid amount means the threshold dollar amount established as policy by the board of county commissioners at and above which the formal competitive sealed bid process must be used, except as otherwise provided in this article. The mandatory bid amount shall be \$50,000.00.

Multiple-award contracts mean those contracts which provide awards to more than one vendor for the same item. This type of contract may be used by the county only when it is determined by the purchasing manager that the use of more than one vendor is in the best interest of the county.

Negotiations for professional services means the act of determining terms, conditions, and prices for the performance of professional services, other than those governed by Competitive Consultants Negotiations Act (CCNA). A proposal review committee appointed by the county administrator shall review offers and responses and conduct discussions with the firms to arrive at final and best offers, in an attempt to negotiate an agreement on a contract for the provision of services to the county.

Open-end contract means a contract whereby an indefinite quantity of supplies, services, or construction work is to be procured, as required by the county, over an identified span of time.

Such contract has a fixed price which is applied to each individual purchase made from it during the term of the agreement.

Open-end purchase order means a purchase order whereby a vendor provides to the county supplies, services, or construction work on demand or on a prescribed schedule which shall not exceed a period of 12 consecutive months. An open-end purchase order may be used as a release and encumbrance document to authorize the county to order on an as-needed basis a predetermined amount of supplies, services, or construction work from an open-end contract.

Operating unit means any department, bureau, administrative office or other functioning unit operating under the board of county commissioners.

Person means any business, individual, union, committee, club, or organization, or group of individuals or any other legal entity.

Policies and procedures of the office of purchasing means those appropriately promulgated directives having general or particular applicability designed to implement or interpret policy, or describing organization, procedure, or practice requirements.

Posting means the act whereby the county places on a bulletin board, in a designated location, a listing which indicates the vendor or vendors that county staff is recommending receive the award of an invitation for bid or request for proposal. It is also public notice of any official action by the county in matters relating to this article, including suspension or debarment.

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Professional services means any narrow discipline wherein a known practitioner has through education and experience developed expert advisory and programming skills as a vocation; any

service performed primarily by vocational personnel which requires the analysis or certification of a professional before the services are acceptable to the user of the service; or any other advisory, study, or programming activity where the purchasing manager determines that the level of skills and/or creativity or the potential or known practitioner warrant procurement in lieu of competitive bid or quotation process.

Proposal means an executed formal document submitted to the county stating the goods and/or service offered to satisfy the need as requested in the request for proposal or request for information.

Proposal review committee means the committee appointed by the county administrator to review offers and responses to requests for proposals (RFP) in accordance with the policies and procedures of the office of purchasing.

Purchase / procurement means buying, purchasing, renting, leasing or otherwise acquiring any goods and/or services for public purposes in accordance with the law, rules, regulations and procedures intended to provide for the economic expenditure of public funds. It includes but is not limited to all functions which pertain to the obtaining of any supplies, materials, equipment and/or services including construction projects and capital improvements required by any department or agency of county government regardless of the source of funds or for which payment is made from county funds. For the purposes of this article, it excludes those items set forth in section 46-44.

Purchase order means a county document used to authorize a purchase transaction with a vendor. It should contain provisions for services ordered; applicable terms as to payment, discounts, date of performance and transportation and other factors or conditions relating to the transaction. Acceptance by vendor of a purchase order shall constitute a contract.

Purchasing agent means any person duly authorized by the purchasing manager to enter into and to administer contracts and to make written

determinations with respect thereto. The term also includes an authorized representative acting within the limits of this authority.

Purchasing manager means the person holding the position as head of the office of purchasing of the county.

Quotation means any oral or written informal offer by a vendor to the county to furnish specific goods and/or services at a stated price.

Request for information (RFI) means a solicitation of responses which will satisfy a need rather than a firm specification and in which the respondent is given latitude in order to develop a product and/or service which will fulfill the need.

Request for letter of interest (RLI) means a solicitation of responses from vendors whereby vendors are invited to submit a summary of their particular qualifications and to state their interest in performing a specific job or service for the county. From such letters of interest, the county determines which of such vendors shall be shortlisted, interviewed, and selected for final contract negotiations.

Request for proposal (RFP) means a solicitation of responses for a good and/or service for which the scope of work, specifications or contractual terms and conditions cannot reasonably be closely defined. Evaluation of a proposal is based on prior established criteria which may include but may or may not be totally limited to price.

Request for quotation (RFQ) means an informal request, either oral or written, to solicit prices from vendors for specific goods and/or services.

Resource manager means an employee, designated by the county administrator, to provide specialized guidance, control, and technical expertise in the procurement of selected items.

Responsible bidder means an individual or business which has submitted a bid, offer, proposal, quotation, or response which, as determined by the county, has the capability in all respects to perform fully the contract requirements and the experience, integrity, reliability and capacity, facilities, equipment and credit which give reasonable assurance of good faith and performance. The county may also consider and give

weight to the bidder's previous conduct and performance under previous contracts with the county and other agencies (including but not limited to delinquency), and determine the quality of the bidder's previous work. The county may, after bid opening, request additional information from the bidder concerning his ability to perform; and the bidder may voluntarily, after opening, provide additional or corrective information concerning his responsibility as bidder.

Responsive bidder means an individual or business which has submitted a bid, offer, proposal, quotation or response which, as determined by the county, conforms in all material respects to the solicitation which may include but is not limited to pricing, surety, insurance, specifications of the goods or services requested or any other matter unequivocally stated in the invitation for bids as a determinant of responsiveness. A lack of conformity in these matters which is nonsubstantive in nature may be considered a technicality or irregularity which may be waived by the county; provided, however, that failure of a bidder or proposer to certify the firm has a drug-free workplace, in accordance with F.S. § 287.087, shall result in rejection of the bid or proposal as nonresponsive.

Selection / negotiation committee means the committee appointed by the county administrator or purchasing manager to review responses for consultant services governed by the State of Florida Competitive Consultants Negotiation Act (CCNA) in which the committee shortlists and ranks the firms in preferential order and negotiates a final contract with the highest ranking firm.

Services means the furnishing primarily of labor, time, and/or effort by a contractor, wherein the provision of goods or other specific end products other than reports, studies, plans, advisories, contractual documents, or other documents relating to the required performance is incidental or secondary. This term shall not include construction, employment agreements, or collective bargaining agreements.

Single source means the only existing source of the only items which meets the needs of the using department as determined by a reasonably thorough analysis of the marketplace.

Sole brand means the only known brand or model of a particular item capable of fulfilling the specific needs of the county.

Specification means the words used in an invitation for bid or quotation to describe the goods and/or service to be purchased or otherwise acquired.

Surplus supplies means those supplies no longer having any useful value to the county. Such supplies include, but are not limited to, obsolete or scrap materials, products, and other items which have exhausted their useful life cycles.

Using department means that department, bureau, administrative office or other functioning unit operating under the authority of the board of county commissioners which requests and utilizes goods and/or services procured under this article.

Vendor means an actual or potential supplier of goods and/or services to the county.

Vendor list means the compilation by category of goods and/or services of the names and addresses of those appropriate suppliers of goods and/or services that have indicated an interest in doing business with the county and are currently in good standing to do so.

(Code 1985, § 1-14-19(e); Ord. No. 98-47, 10-27-1998; Ord. No. 2001-9, § 2, 3-1-2001; Ord. No. 2005-42, § 1, 9-1-2005; Ord. No. 2009-18, § 1, 7-9-2009)

Cross reference—Definitions generally, § 1-2.

Secs. 46-46—46-60. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 46-61. Organization—Office of purchasing.

The office of purchasing shall be the agency through which the county will conduct its purchases of all supplies, material, equipment, contractual services and/or combination of goods and services.

(Code 1985, § 1-14-20(a))

Sec. 46-62. Same—Purchasing manager.

Subject to the provisions of this article and under the direction of the county administrator, the purchasing manager shall serve as the principal officer for the purchase and sale of goods and services for county government.
(Code 1985, § 1-14-20(b))

Sec. 46-63. Same—Duties of purchasing manager.

The purchasing manager shall:

- (1) Administer the central purchasing system for the county.
- (2) Upon request of any county constitutional officer or other county entity set out in section 46-44, make available to such officer or entity the services provided for in this division subject to the terms of this article and any policies and procedures of the purchasing office.
- (3) Maintain a catalog system for the use of county departments and agencies.
- (4) Maintain a current file of qualified sources of supply for all goods and services purchased by the county:
 - a. Such vendor file shall be maintained so as to ensure that every qualified business in good standing with the county which has requested placement in the file is included and that the widest practicable vendor coverage is provided.
 - b. A vendor's name may be removed from the vendor file for failing to respond to three consecutive invitations to bid. After such removal, vendor may be considered for reinstatement upon written request of vendor.
- (5) Provide for the establishment/promulgation of policies and procedures for purchasing in the office of purchasing's policies and procedures manual which shall be reviewed and amended from time to time and delegate certain rights, powers and

authority vested in his position to subordinate purchasing agents and other employees.

- (6) Serve as ex-officio nonvoting chairman on all committees relating to the subject matter of this article.
- (7) Perform other duties as directed by the board of county commissioners or the county administrator.

(Code 1985, § 1-14-20(c); Ord. No. 98-47, 10-27-1998; Ord. No. 2001-9, § 3, 3-1-2001)

Sec. 46-64. Award approval and threshold authority.

(a) The board of county commissioners hereby approves every agreement, contract or other purchase entered into and every award in an amount not to exceed the mandatory bid amount of \$50,000.00. Pursuant to this approval, the board of county commissioners hereby delegates to the county administrator or designee, threshold approval authority to execute contracts for such purchases or awards of up to \$50,000.00.

(b) For any purchase or award made in accordance with this article exceeding the mandatory bid amount of \$50,000.00, the contract for such purchase or award shall be specifically approved by the board of county commissioners and thereafter shall be executed by the county administrator or designee.

(c) Notwithstanding the above threshold approval authority, change orders to any purchase or award shall be executed pursuant to the threshold levels set out in section 46-86.

(d) Purchases or awards, exempted from the competitive purchasing provisions of this article under section 46-44, shall be governed by the threshold approval authority of this section.

(e) The clerk of the circuit court as ex officio clerk and accountant of the board of county commissioners and as auditor, recorder, and custodian of all county funds, is authorized to accept, audit and process all such agreements, pur-

chases, or awards made on behalf of the county pursuant to this article as the act and deed of the county.

(Code 1985, § 1-14-20(d); Ord. No. 98-47, 10-27-1998; Ord. No. 2001-60, § 1, 11-1-2001; Ord. No. 2002-6, § 1, 2-7-2002; Ord. No. 2002-32, § 1, 7-18-2002; Ord. No. 2005-42, § 2, 9-1-2005)

Sec. 46-65. Conflict of interest.

In addition to the prohibitions set out in Part III, Chapter 112, Florida Statutes, neither the county administrator, the purchasing manager nor any member of his staff shall be financially interested or have any personal beneficial interest, directly or indirectly, in any purchase or contract of any supplies, materials, equipment, or services used by or furnished for the county. The county administrator, the purchasing manager and every member of his staff are prohibited from accepting or receiving from any person, firm or corporation to which any purchase or contract may be awarded any money, rebate, gift, or anything of value or any promise, obligation or contract for future reward of compensation.

(Code 1985, § 1-14-25; Ord. No. 2001-9, § 4, 3-1-2001)

Secs. 46-66—46-80. Reserved.

DIVISION 3. PROCEDURES

Sec. 46-81. Source selection.

(a) The procurement of all goods, material, equipment, services and combinations of goods and/or services by or on behalf of the board of county commissioners, including those transactions through which the board of county commissioners shall receive revenue, in an amount equal to or in excess of the mandatory bid amount of \$50,000.00 shall be awarded by a competitive bid or proposal process or as specifically provided in sections 46-91 and 46-100, unless otherwise provided by state or federal law.

(b) Purchase orders or contracts arising from procurements prescribed in subsection (a) shall require a one time formal approval by the board of county commissioners. Such awards or any other procurement formally awarded by the board of

county commissioners shall be for the duration of the original award until final payment and shall not be restricted to the fiscal year of the board action to award, and all payments shall be subject to availability of the current budget.

(c) Nothing in subsection (a) or (b) of this section shall prohibit the board of county commissioners from renewing purchase orders or contracts with vendors/contractors originally selected through a competitive selection process or from purchasing goods, material or equipment furnished by the county for inclusion in a capital improvement construction project whose cost has been incorporated as part of a bid selected in a competitive bidding process provided for in this division. Any such construction goods, materials, or equipment so purchased shall be exempt from the competitive bid process of this article.

(Code 1985, § 1-14-21; Ord. No. 98-47, 10-27-1998; Ord. No. 2009-18, § 2, 7-9-2009)

Sec. 46-82. Competitive sealed bid process—Generally.

(a) *Invitation for bids.* An invitation for bids shall be issued which shall include the specifications for the purchases sought.

(b) *Public notice.* Public notice of the invitation for bids shall be published in a newspaper of general circulation for a reasonable period prior to bid opening and by other such means as deemed appropriate by the purchasing manager.

(c) *Bid submission.* Bids shall be accepted only from vendors that are currently in good standing with the county. Bids must be received no later than the time and date and at the location specified for bid opening in the invitation for bid. No bids shall be accepted after such time and date or at any other location than specified. Bids received later, or at any other location than specified, or from a suspended or debarred vendor shall be returned unopened to the bidder.

(d) *Bid opening.* Bids shall be opened publicly at the time and place specified in the invitation for bids. The name of each bidder, the amount of each bid, and such other relevant information shall be recorded and such information shall be posted.

(e) *Bid cancellation or postponement.* The purchasing manager for good cause may, prior to bid opening, elect to cancel a bid or postpone the date and/or time of bid submission or opening. After a bid opening, the purchasing manager may cancel a bid if no or only one responsive, and responsible bid is received, if the lowest most responsive, most responsible bid is in excess of the funding limits established by the county for that bid, or if it is deemed that it is not in the best interest of the county to continue with the procurement. In the event of discovery after bid opening of a patent irregularity or procedural flaw which is so severe as to render the process invalid, or in the event that the county determines that the need for the procurement no longer exists and will not exist in the immediate future, the purchasing manager may also cancel the bid.

(Code 1985, § 1-14-21(1)(a)—(e); Ord. No. 98-47, 10-27-1998)

Sec. 46-83. Same—Corrections, additions to and withdrawal of bids.

(a) The following shall govern the correction of information submitted in a bid when that information is a determinant of the responsiveness of the bid:

- (1) Errors in the extension of unit prices stated in a bid or in multiplication, division, addition, or subtraction in a bid may be corrected by the purchasing manager prior to award. In such cases, the unit prices shall not be changed.
- (2) No bidder shall be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid, except that any bidder may correct errors in extension of unit prices stated in the bids, or in multiplication, division, addition, or subtraction. In such cases, unit prices bid shall not be changed.
- (3) Nothing herein is intended to prohibit the acceptance of a voluntary reduction in price from the lowest most responsive and responsible bidder after bid opening provided such reduction is not conditioned on, or does not result in, the modification or deletion of any specifications or condi-

tions contained in the invitation for bids or after the determination of which vendor is to be awarded the bid or portion thereof.

(b) A bidder who is alleging a judgmental mistake of fact shall not be permitted to withdraw his bid after bid opening. If such bidder unilaterally withdraws his bid without permission after bid opening, the purchasing manager may suspend the vendor from receiving new orders from the county for up to two years, dating the date of unilaterally withdrawal.

(c) A bidder alleging a nonjudgmental mistake of fact may be permitted to withdraw his bid only when it is determined by the purchasing manager that there is reasonable proof that such a mistake was made and, if the bid is the low bid, that the intended bid cannot be determined with reasonable certainty. If a bidder unilaterally withdraws his bid without permission after bid opening, the purchasing manager may suspend the vendor from receiving new orders from the county for up to two years, dating from the date of the unilateral withdrawal.

(d) Information in a bid, which concerns the responsibility of the bidder, shall not necessarily be considered conclusive at the time of bid opening, except when the invitation for bids unequivocally states that the bid shall not be considered responsive unless the particular information is provided in the bid. When such information has not been so declared as a determinant of responsiveness of the bid:

- (1) The purchasing manager may determine that the information submitted concerning the responsibility of the bidder is so administratively inadequate as to warrant a recommendation of rejection of the bid based on the lack of demonstrated bidder responsibility.
- (2) The purchasing manager may, after bid opening, request additional information of the bidder concerning his responsibility to perform; and the bidder may voluntarily, after bid opening, provide additional or corrective information concerning his responsibility as a bidder. The purchasing manager shall consider this and all other

information gained prior to the time of award or rejection in making his determinations and recommendations concerning bid acceptance and award.

(e) A bid shall be considered responsive only if it conforms to the requirement of the invitation for bids concerning pricing, surety, insurance, specifications of the goods or services requested, and any other matter unequivocally stated in the invitation for bids as a determinant of responsiveness; provided, however, that the alternative methods may be considered and awarded unless specifically prohibited. A lack of conformity on these matters which is nonsubstantive in nature may be considered a technicality or irregularity which may be waived by the purchasing manager. Failure by the bidder to execute the county's contractual services acknowledgement form binding the bidder's offer shall result in such bid being rejected as nonresponsive.

(Code 1985, § 1-14-21(1)(f); Ord. No. 98-47, 10-27-1998; Ord. No. 2001-9, § 5, 3-1-2001)

Sec. 46-84. Same—Bid evaluation.

(a) The county reserves the right to accept or reject any and all bids and to make award to the lowest most responsive and most responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bid and whose award will, in the opinion of the county, be in the best interest of and most advantageous to the county.

(b) Factors to be considered in determining whether the standard of responsibility has been met shall include whether a prospective contractor/vendor has:

- (1) Available the appropriate financial, material, equipment, facility, and personnel resources, experience, knowledge and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (2) A satisfactory record of performance;
- (3) A satisfactory record of integrity;
- (4) Qualified legally to contract with the county;

(5) Supplied all necessary information in connection with the inquiry concerning responsibility, including but not limited to any licenses, permits, insurance or organization papers required; and

(6) Been suspended, debarred or otherwise disciplined by the county, any state agency or subdivision, or the federal government for violations of procurement ordinances or laws.

The prospective contractor/vendor shall supply information requested by the county concerning the responsibility of such contractor/vendor. If such contractor/vendor fails to supply the requested information, the county shall base the determination of responsibility upon any available information or may find the prospective contractor/vendor nonresponsible if such information is not submitted within the time specified by the county.

(c) The county may conduct a prequalification process in which the responsibility of potential vendors/contractors is evaluated and may then limit acceptance of bids or responses to those vendors/contractors deemed qualified in such process.

(Code 1985, § 1-14-21(1)(g); Ord. No. 98-47, 10-27-1998)

Sec. 46-85. Same—Bid award.

(a) Award shall be made to the lowest most responsible, most responsive bidder and shall be effective upon issuance of a purchase order by the purchasing manager or execution of a contract pursuant to threshold approval authority set out section 46-64. The county may reject any bid prior to such issuance.

(b) The notice of intent to award procurements over the mandatory bid amount shall be posted at the location set for bid opening for a period of two business days. In the event only one responsive, responsible bid is received, that bid may be awarded to the sole bidder or rebid or canceled as provided in subsection 46-82(e).

(Code 1985, § 1-14-21(1)(h); Ord. No. 98-47, 10-27-1998; Ord. No. 2001-60, § 2, 11-1-2001)

Sec. 46-86. Same—Amendments/changes after award.

(a) Threshold approval authority for change orders to executed contracts shall be determined by the cumulative total amount of the original purchase or award and any subsequent change orders to that purchase or award. The county administrator or his designee may authorize cumulative increases of up to \$50,000.00 or ten percent of the award amount, whichever is greater. Changes to an award that have reached or exceeded \$50,000.00 or ten percent of the award amount shall not be effective unless such increase is first approved by the board of county commissioners.

(b) Authority to increase the amount of any award is predicated on the condition that all provisions of the original award remain intact and unchanged.

(c) Changes to executed contracts are prohibited which change the scope of work from its original proposal or bid. The county administrator or his designee may approve extensions of delivery dates and performance time on contracts provided that such resultant changes to the established award amount comply with the provisions of this article.

(Code 1985, § 1-14-21(1)(i); Ord. No. 98-47, 10-27-1998; Ord. No. 2001-9, § 6, 3-1-2001; Ord. No. 2001-60, § 3, 11-1-2001; Ord. No. 2002-6, § 2, 2-7-2002; Ord. No. 2002-32, § 2, 7-18-2002; Ord. No. 2009-18, § 3, 7-9-2009; Ord. No. 2009-30, § 1, 9-3-2009)

Sec. 46-87. Competitive proposal process—Alternative to competitive bid process.

When it is determined by the purchasing manager that the use of competitive sealed bidding is impractical or inappropriate, the county may utilize the competitive process in sections 46-87 through 46-90 as an alternative to the competitive bid process.

(Code 1985, § 1-14-21(2))

Sec. 46-88. Same—Requests for proposals or information.

Requests for proposals or requests for information may be issued, setting forth the performance

parameters of the goods and/or services, and establishing the evaluation factors to be used which set forth the terms and conditions of the goods and/or services sought including evaluation factors.

- (1) *Notice.* Adequate notice shall be published in a newspaper of general circulation for a reasonable time prior to the time set of the submission of responses and by such other means as deemed appropriate by the purchasing manager.
- (2) *Submission.* Proposals must be received no later than the original or amended time and date and at the location specified for submission in the request for proposal or request for information. No proposal shall be accepted after such time or at any other location than specified; any proposal received later or at any other location than specified shall not be considered to be responsive. Failure by the proposer to execute the county's contractual services acknowledgment form binding the proposer shall result in such proposal being rejected as nonresponsive.
- (3) *Proposal cancellation or postponement.* The purchasing manager may, prior to a proposal opening, elect to cancel or postpone the date and/or time for proposal opening or submission. After the proposal opening, the purchasing manager or designee may cancel the proposal if no or only one responsive, responsible proposal is received, or if the lowest most responsive, most responsible proposal is in excess of the funding limits established by the county for that proposal or if it is deemed that it is not in the best interest of the county to continue with the procurement. In the event of discovery after proposal opening of a patent irregularity or procedural flaw which is so severe as to render the process invalid, the purchasing manager or designee may also cancel the proposal.

(Code 1985, § 1-14-21(2)(a); Ord. No. 98-47, 10-27-1998; Ord. No. 2001-9, § 7, 3-1-2001)

Sec. 46-89. Same—Proposal evaluation.

The purchasing manager shall recommend award to the most responsive and responsible

offerer selected by the proposal review committee whose proposal is determined to be the most advantageous to the county. Evaluation of offerers and/or proposals may be made in a multi-step selection process as set forth in the policies and procedures of the office of purchasing or in the request for proposal or request for information and shall be based upon factors of responsibility set forth in subsection 46-84(b)(2) and upon factors of responsiveness and quality based upon criteria set forth in the request for proposals or request for information and any other relevant information obtained through the evaluation process. Such criteria may include but may or may not be limited to price.

(Code 1985, § 1-14-21(2)(b); Ord. No. 98-47, 10-27-1998; Ord. No. 2001-9, § 8, 3-1-2001)

Sec. 46-90. Same—Award.

Notice of the intent to award shall be posted at the location set for proposal submission for a period of two business days. The award shall be made in accordance with the provisions of section 45-85. In the event only one responsive, responsible proposal is received, the county may award to the sole proposer or restart or cancel as provided in subsection 46-88(3). Amendments or changes to the contract after award shall be made in accordance with the provisions of section 46-86. (Code 1985, § 1-14-21(2)(c); Ord. No. 98-47, 10-27-1998)

Sec. 46-91. Alternative source selection—Small purchases.

Any purchase for an amount less than the mandatory bid amount may be made in accordance with those procedures promulgated in the policies and procedures of purchasing; provided, however, no purchase shall be artificially divided so as to constitute a small purchase under this division.

(Code 1985, § 1-14-21(3)(a))

Sec. 46-92. Same—Sole source purchases.

The purchasing manager may make the purchase, under the policies and procedures of purchasing, of goods and/or services without competitive bid when the director of the using department

has documented in writing that such good and/or service is the only item that meets the need and is available through only one source.

(Code 1985, § 1-14-21(3)(b))

Sec. 46-93. Same—Emergency purchases.

(a) In the event of an emergency, the chairman of the board of county commissioners, upon receipt of a written request transmitted through the county administrator, from the director or designee of a using department, may authorize emergency purchases which exceed \$50,000.00. Such purchases shall be exempted from the requirements of the competitive bid or proposal process of this article.

(b) Emergency purchases of over \$50,000.00 shall be reported to the board at the next regularly scheduled meeting. The board chairman's authority shall not be delegated to any other person except that the vice-chairman may act for the chairman in his/her absence. Emergency purchases are subject to internal audit review.

(Code 1985, § 1-14-21(3)(c); Ord. No. 98-47, 10-27-1998; Ord. No. 2001-60, § 4, 11-1-2001)

Sec. 46-94. Same—Cooperative purchases.

Notwithstanding any requirements of this article, the purchasing manager may purchase goods and/or services under contract with the federal, state, or municipal governments or any other governmental agency or political subdivision providing the vendor extends the same terms and conditions of the contract to the county and provided that the original contract was established by an open, competitive procurement process.

(Code 1985, § 1-14-21(3)(d); Ord. No. 98-47, 10-27-1998)

Sec. 46-95. Same—Direct purchases.

Notwithstanding the provisions of this article, in the event that no bids are received, and the purchasing manager documents that no significant alterations in the specifications, qualification, or terms and conditions can be made to encourage competition, the county administrator may authorize the purchasing manager to make

direct purchase of the goods or services from any vendor identified as being able to meet the original bid specifications.

(Code 1985, § 1-14-21(3)(e))

Sec. 46-96. Same—Professional and consultant services.

(a) *Estimated value equal to or in excess of mandatory bid amount.* The procurement of the services of professionals or consultants when the estimated fee is equal to or in excess of the mandatory bid amount shall be awarded by competitive selection based upon an evaluation of the required qualifications of the professional or consultant and the scope of work. Evaluation and award will be made in accordance with the applicable sections of this article and may or may not be based in whole or in part upon price. Award of professional and consultant services shall include a contract which specifies the terms and conditions of services as negotiated between the county and vendor.

(b) *Estimated value less than the mandatory bid amount.* The procurement of the services of professionals or consultants when the estimated fee is less than the mandatory bid amount shall be awarded in accordance with procedures promulgated for small purchases set forth in section 46-91.

(c) *Waiver of requirements for competitive selection.* The board may waive the requirements for competitive selection and approve professional or consulting services upon recommendation of the administrator.

(Code 1985, § 1-14-21(3)(f))

Sec. 46-97. Same—Professional architectural, engineering, landscape architectural or land surveying services.

(a) *Services governed by F.S. § 287.055.* The procurement of such professional services shall be governed by F.S. § 287.055, and in accordance with the policies and procedures established by the office of purchasing.

(b) *Services not governed by F.S. § 287.055.*

(1) *Projects estimated to exceed mandatory bid amount.* Services for projects, the basic construction cost for which is estimated to be equal or to exceed the mandatory bid amount but which is not in excess of the threshold amount set forth in F.S. § 287.055 shall be awarded by the competitive bid or proposal process set forth in sections 46-64 and 46-82 through 46-90.

(2) *Projects estimated to be less than mandatory bid amount.* Services for construction projects or for planning or study activities, the basic cost of which is estimated to be less than the mandatory bid amount, shall be awarded in accordance with procedures promulgated for small purchases set forth in section 46-91.

(3) *Estimated value less than mandatory bid amount.* The procurement of the services of professionals or consultants, when the estimated value is less than the mandatory bid amount, shall be made in accordance with the policies and procedures of purchasing.

(Code 1985, § 1-14-21(3)(g); Ord. No. 98-47, 10-27-1998; Ord. No. 2001-9, § 9, 3-1-2001)

Sec. 46-98. Same—Design-build services.

Design-build services shall be governed by F.S. § 287.055. The county shall award design-build contracts by the use of a qualifications based selection process pursuant to F.S. §§ 287.055(3)—287.055(5), or by use of the competitive proposal selection process set out in this section. The procurement of competitive proposal design-build services shall be made in accordance with the following rules and procedures:

(1) *Design criteria package.* The design criteria package shall be prepared and sealed by a design criteria professional employed or retained by the county. If the county enters into a professional services contract for the preparation of the design criteria package, the professional shall be selected and contracted with in accordance with the requirements of F.S.

§§ 287.055(4) and 287.055(5). The professional preparing the design criteria package shall not be eligible to render services under a design-build contract executed pursuant to the package prepared by such professional.

- (2) *Selection/negotiation committee.* A selection/negotiation committee, in this division referred to as "committee," is hereby established which shall be composed of members designated by the county administrator or purchasing manager.

(Code 1985, § 1-14-21(3)(h)(1), (2); Ord. No. 98-47, 10-27-1998; Ord. No. 2001-9, § 10, 3-1-2001; Ord. No. 2009-18, § 4, 7-9-2009)

Sec. 46-99. Same—Selection.

Notice the county shall publicly advertise in a uniform and consistent manner on each occasion when design-build services are required except in

cases of valid public emergencies. The advertisement shall include a general description of the project and shall indicate how, and the time within which, interested design-build firms may apply for consideration.

(Code 1985, § 1-14-21(3)(h)(3))

Sec. 46-100. Same—Qualification.

(a) *Generally.* Any firm or individual desiring to provide design-build services for the county must first be determined legally qualified. Legal qualifications are:

- (1) Firms must be properly certified to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent.
- (2) Firms must be properly certified to practice or to offer to practice engineering, architecture, or landscape architecture.
- (3) The firm shall be duly qualified to perform its proposed services under any other applicable law.

The committee shall prepare and maintain a list of design-build firms qualified by training and experience. The county may establish a procedure whereby annual statements of qualifications and performance data shall be submitted by design-build firms to the county. Each design-build firm included on such list shall receive an announcement of individual projects.

(b) *Solicitation.* Requests for proposals shall be sent to all interested firms requesting that their qualifications, proposed design and price be submitted at a time and place certain. The request for proposal shall contain at a minimum the design criteria package; evaluation criteria based on price, technical and design aspects of the project; evaluating procedures and any other information pertinent to selection and award of the design-build contract. The committee shall determine the evaluation criteria and the evaluation process of each project. All proposed designs and price proposals shall be submitted in a separate sealed envelope.

(c) *Evaluation.* The committee shall review all proposals and identify no less than three firms deemed qualified to perform the required services based on firm qualifications, availability and past work of the firm. After short-listing, the committee shall open the envelopes containing the proposed design and the prices. The committee shall then rank the short-listed firms based on the evaluation criteria set forth on the request for proposal. The committee may require oral presentations of short-listed firms.

(d) *Negotiation.* After ranking, the committee shall attempt to negotiate a contract within the parameters of the design criteria package. Design-build contracts will be awarded under the provisions of section 46-64 and other applicable provisions of this article.

(e) *Regulatory or legal mandates.* In the case of regulatory or legal mandates, the committee shall be authorized to negotiate with the best qualified firm available at the time.

(f) *Additional functions of design criteria professional.* The design-criteria professional shall be consulted in the evaluation process, the supervision or approval of the county of the detailed working drawings of the project and for the evaluation of the compliance of the project construction with its design criteria package.

(Code 1985, § 1-14-21(3)(h)(4)—(9))

Sec. 46-101. Protested solicitations and awards.

(a) *Right to protest.* After posting, any actual or prospective bidder or proposer who is aggrieved in connection with the pending award or other element of the process leading to the award of a contract may protest to the purchasing manager.

(b) *Notice.* The protest shall be submitted within two business days after posting of the award recommendation at that location where bids or proposals are submitted. The protest must be in writing and must identify the protester and the solicitation and shall include a factual summary of the basis of the protest. Such protest is considered filed when it is received by the office of purchasing.

(c) *Authority to resolve.* Protests filed in accordance with subsection (b) of this section will be resolved under the provisions of this subsection.

(1) *Authority of purchasing manager.* The purchasing manager shall have the authority to review and attempt to resolve the protest informally. After reviewing the facts surrounding the issues raised in the protest letter, the purchasing manager may make the determination to:

- a. Uphold the protest based on a violation in accordance with the provisions of this article. Should this corrective action result in a change in the recommended awardee, a new award posting will be accomplished in accordance with section 46-85, which posting shall again allow for filing of protests.
- b. Deny the protest. If the protest is denied, the protestor has the right to request that the protest be referred to a special master for a formal protest hearing in accordance with step 2 of the protest procedures as established in subsection (c)(2) of this section.
- c. The purchasing manager shall promptly issue a written statement of the determination, providing the reason for that determination, and providing copies to the protestor and to any other intervening party.

(2) *Continuation of protest by protestor.*

- a. If the protestor wishes to continue the protest after it has been denied by the purchasing manager, the protestor shall be required to request that a formal protest hearing before a special master be convened. This request shall be made in writing to the purchasing manager within two business days of issuance of the purchasing manager's determination. Such request shall state the particular grounds on which it is based and may include pertinent documents and evidence relating thereto.

Any grounds not stated shall be deemed to have been waived by the protestor. This written request to convene a formal protest hearing must be accompanied by a protest bond of an amount equal to 1.0 percent of the value of the solicitation, but in no case less than \$500.00 nor greater than \$5,000.00. This bond shall be in cash or by a U.S. Postal Service money order, certified cashier's or bank check payable to Escambia County. Failure to post such bond within two business days after the purchasing manager's determination shall result in the protest being dismissed by the purchasing manager.

- b. The bond required by this section shall be conditioned upon the payment of all costs and charges which may be adjudged against the person filing the request for a formal protest hearing. If the person protesting the award prevails, the bond shall be returned to the protestor; however, if, after completion of a formal protest hearing in which the county prevails, the bond shall be forfeited, and the county shall be entitled to recover the costs and charges, excluding attorney's fees, of such hearing. The entire amount of the bond also shall be forfeited if the special master determines that a protest was filed for a frivolous or improper purpose, including, but not limited to, the purpose of harassing, causing unnecessary delay, or causing needless cost for the county or other parties.

(3) *Hearing by special master.* After referral by the purchasing manager, a special master shall hold a hearing within ten business days of the receipt of such request.

- a. At or prior to the protest proceeding, the protestor may submit such additional written or physical materials, objects, statements, affidavits, and

arguments which he deems relevant to the issues raised. In the proceeding, the protestor, its representative, or counsel, may make an oral presentation of such evidence and arguments, which may include direct and cross examination of witnesses. Hearsay evidence shall be admissible in the proceeding, but shall not form the sole basis for the decision of the special master. At any time, the special master may also make whatever inquiries of the parties and their witnesses he deems pertinent to a determination of the protest. The judicial rules of evidence and procedure shall not apply; however, the special master shall ensure that the proceeding affords meaningful due process and fundamental fairness to the protestor at all times.

- b. At the conclusion of the parties' evidence and arguments, the special master shall announce a decision and shall prepare a written decision and recommendation which shall be filed with the board of county commissioners within five days after the hearing. The text of the decision shall find facts and make conclusions, which conclusions shall be deductible from the facts as found by the special master. The special master shall state the facts specially and thereafter state separately a conclusion thereto. The findings of fact shall be stated in nonargumentative and neutral terms and shall be divided into short separately numbered, declarative paragraphs or sentences each of which may contain only one feature or point.
- c. The special master's decision shall include one of the following recommendations:
 - 1. If it is determined that the solicitation or award is in violation of law or the policies and procedures of the office of pur-

chasing, the special master shall recommend that the solicitation be canceled or the award be canceled or revised, and that the protestor's bond be returned.

- 2. If it is determined that the solicitation or award should be upheld, the special master shall recommend that the purchasing manager shall be directed to proceed with the posted award in accordance with the policies and procedures of the office of purchasing, and that the protestor's bond shall be forfeited. All costs and charges of the hearing shall be paid to the county within five business days after final action of the board of county commissioners upholding the special master's decision and recommendation. Any costs and charges not fully discharged by the amount of the protestor's bond shall be paid by the protestor. Failure to pay such costs and charges within this five-business-day period shall result in the protestor being suspended from the county's vendor list until such payment is made.
- d. After filing, the special master's decision and recommendation shall then be presented for action at the next regularly scheduled meeting of the board of county commissioners together with a recommendation of the county administrator relating to the disposition of the case. The matter shall be resolved by the board on the basis of the record before the special master and no evidence or issue which was not presented or raised at such hearing shall be considered. Presentations to the board by parties shall be limited to 30 minutes per side. The foregoing time limitation shall be inclusive of all speakers address-

ing the board on behalf of each side. At the conclusion of such testimony, the board shall by majority vote accept or reject the decision and recommendation of the special master. The board may also in its sole discretion refer the matter back to the special master for additional proceedings.

- e. The determination by the board shall be the final and conclusive decision by the county regarding a bid protest under this section. However, such determination shall in no way be construed to limit the county's authority as otherwise may be provided for now or in the future by this article. Any aggrieved party within 30 days of such determination by the board may bring an action in the appellate division of the circuit court to appeal such decision.

(d) *Stay of procurement during protests.* Notwithstanding anything contained in this division to the contrary, in the event of a timely protest, the purchasing manager shall stay the award of the contract unless the county administrator, with the advice of the county attorney and after consultation with the using department, makes a determination that the award of the contract without delay is necessary to protect substantial interests of the county government.

(e) *Reservation of powers by the board.* Nothing in this section is intended to affect the powers of the board to settle or resolve any protest proceeding or to settle actions pending before the courts relating to any protest. At any phase in the procurement process that an award, protest, or other matter concerning a solicitation is scheduled before the Board of County Commissioners, the County Administrator, Purchasing Director or other staff shall not take any action which would cancel or otherwise render moot any action of the Board of County Commissioners concerning that solicitation.

(Code 1985, § 1-14-21(4); Ord. No. 98-47, 10-27-1998; Ord. No. 2005-42, § 3, 9-1-2005; Ord. No. 2007-64, § 1, 11-1-2007)

Sec. 46-102. Suspension and debarment.

(a) *Authority.* As set out below, the purchasing manager, upon the approval of the county administrator, may suspend or debar the cause the right of a vendor to be included on the county's vendor list and any subsequent bid or proposal during the pendency of such suspension or debarment from that vendor shall be rejected by the county; provided, however, the board shall have the power at any time to waive, stay or lift such suspension or debarment upon the application of the vendor as provided herein.

(b) *Suspension.* A vendor may be suspended based upon the following:

- (1) Failure to fully comply with the conditions, specifications, or terms of a bid, proposal or contract with the county.
- (2) Commission of any misrepresentation in connection with a bid, quotation or proposal.
- (3) Charged by a court of competent jurisdiction with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract. If charges are dismissed or the vendor is found not guilty, the suspensions shall be lifted automatically upon written notification and proof of final court disposition provided by the vendor to the county.
- (4) Charged by a court of competent jurisdiction with the following: 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 government contractor. If charges are dismissed or the vendor found not guilty, the suspension shall be lifted automatically upon written notification and proof of final court disposition provided by the vendor to county.
- (5) Vendor becomes insolvent, has proceedings in bankruptcy instituted against it or

compounds its debts or assigns over its estate or effects for payment thereof or has a receiver or trustee appointed over its property.

- (6) Commission of any act or omission to perform any act which is grounds for debarment.
- (7) Any other cause the purchasing manager determines to be so serious and compelling as to materially and adversely affect responsibility of a business as a county government contractor, including but not limited to suspension by another governmental entity for substantial cause.
- (8) Violation of the ethical standards set forth in local, state, or federal law.

(c) *Debarment.* A vendor may be debarred for the following:

- (1) Repeated failure to fully comply with the conditions, specifications, drawings, or terms of a bid, proposal or contract with the county.
- (2) Conviction by or judgment obtained in a court of competent jurisdiction for commission of those offenses in connection with the vendor's commercial enterprise stated in subsections (b)(3) and (b)(4) of this section. If the conviction or judgment is reversed through the appellate process, the debarment shall be removed immediately upon written notification and proof of final court disposition from the vendor to the county.
- (3) Conviction for the commission of any fraud or act of collusion in connection with any sale, bid, quotation, proposal or other act incident to doing business with the county.

(d) *Purpose of suspension and debarment.* The county shall solicit offers from, award contracts to, and consent to subcontracts with responsible vendors only. To effectuate this policy, the suspension or debarment of vendors from county work may be undertaken. The serious nature of suspension or debarment requires that such sanction be imposed only when it is in the public interest for the county's protection, and not for purposes of

punishment. Such suspension or debarment shall be imposed in accordance with the procedures contained in this section.

(e) *Effects of suspension and debarment.* Suspended or debarred vendors are excluded from receiving contracts, and departments shall not solicit offers from, award contracts to, or consent to subcontracts with the vendors, unless the county administrator determines that an emergency exists justifying such action and obtains approval from the board of county commissioners. Such vendors are also excluded from conducting business with the county as agents, representatives, subcontractors, or partners of other vendors.

(f) *Continuation of current contracts.* Commencing on the effective date of Ordinance No. 98-47, all proposed county contracts shall incorporate this article and specify that suspension or debarment may constitute grounds for termination of such contract.

- (1) The suspension or debarment shall take effect in accordance with the notice provided by the purchasing manager, except that if a department continues contracts or subcontracts in existence at the time the vendor was suspended or debarred, the suspension or debarment period shall commence upon the conclusion of the contract, and in the interim, the vendor shall not enter into any county contracts.
- (2) Departments may not renew or otherwise extend the duration of current contracts or consent to subcontracts with suspended or debarred vendors, unless the county administrator determines that an emergency exists justifying the renewal or extension of such contracts, and such action is approved by the board of county commissioners.

(g) *Suspension or debarment procedures.* The following procedures shall be used for the suspension or debarment of a vendor:

- (1) Investigation and referral. The using department shall promptly investigate and prepare a written report concerning a vendor's proposed suspension or debarment, which shall be forwarded to the

county administrator stating with specificity the facts supporting such a request for the suspension or debarment.

- (2) Notice of suspension or debarment. Within five business days of the receipt of a department's request, the county administrator, after examining such reports, may direct the purchasing manager to issue a preliminary notice of suspension or debarment for a maximum period of up to six months. The purchasing manager shall immediately advise the subject vendor and any specifically named affiliates, by certified mail, return receipt requested, or personal service that:
- a. Suspension or debarment has been imposed by the county administrator effective upon the receipt of such notice;
 - b. This notice contains the reasons and causes for the suspension or debarment in terms which are sufficient to put the vendor on meaningful notice of the conduct or transaction upon which it is based;
 - c. If requested within 21 calendar days after the date of the receipt of such notification by the vendor, a hearing to contest the county administrator's decision will be conducted before a special master at a date and time not more than ten days after the receipt of such a request. The notice shall also advise the vendor that it may be represented by an attorney, may present documentary evidence, verbal testimony, and may cross-examine testimony presented against it; and
 - d. Such suspension or debarment action may only be stayed after petition by the vendor to the board of county commissioners.
- (3) Finality of county administrator's decision. The preliminary suspension or debarment notice of the county administrator shall become final and conclusive unless
- the suspended or debarred vendor timely requests a hearing before a special master to contest said notice.
- (4) The special master shall be the sole trier of fact and shall ensure that the proceeding affords meaningful due process and fundamental fairness to the vendor. In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the special master shall make a decision on the basis of all the undisputed, material information in the administrative record, including any undisputed, material submission made by the vendor. Where actions are based on disputed evidence, the special master shall decide what weight to attach to evidence of the record, judge the credibility of witnesses, and base his decision on the preponderance of the evidence standard. The special master's decision shall be made and shall be announced at the conclusion of the parties' arguments and evidence.
 - (5) Hearsay evidence shall be admissible at the hearing but shall not form the sole basis for initiating a suspension or debarment procedure nor the sole basis of any determination by the special master of the suspension or debarment of the vendor. The hearing shall be recorded by use of a court reporter at the expense of the county.
 - (6) A written decision and recommendation thereafter shall be filed within five business days with the board of county commissioners which shall include the special master's factual findings, conclusions of law, and shall include either a recommended specific term of suspension or debarment to be imposed by the board or a recommended dismissal of the county administrator's preliminary notice of suspension or debarment.
 - (7) After filing, the special master's decision and recommendation shall then be presented for action at the next regularly scheduled meeting of the board of county

commissioners together with a recommendation of the county administrator relating to the disposition of the case. The matter shall be resolved by the board on the basis of the record before the special master and no evidence or issue which was not presented or raised at such hearing shall be considered. Presentations to the board by parties shall be limited to 30 minutes per side. The foregoing time limitation shall be inclusive of all speakers addressing the board on behalf of each side. At the conclusion of such testimony, the board shall by majority vote accept or reject the decision and recommendation of the special master. The board may also in its sole discretion refer the matter back to the special master for additional proceedings. An appeal of the decision of the board, which is filed within 30 days of its receipt by vendor, shall be subject to review by the appellate division of the circuit court. A suspended or debarred vendor also may seek a stay of the board's decision in circuit court.

- (8) The period of suspension or debarment imposed upon a vendor shall be within the sole discretion of the board of county commissioners. Suspension or debarment shall be for a period commensurate with the seriousness of the cause, and, where applicable, within the guidelines set forth below, but in no event shall such period exceed five years.
- (9) The following guidelines for such period of suspension or debarment shall apply except where mitigating or aggravating circumstances justify deviation:
- a. For commission of offenses as described in subsections (b)(1), (b)(2) and (b)(8) of this section: six months to two years.
 - b. For commission of an offense as described in subsection (b)(3) of this section: six months to one year.
 - c. For commission of offenses as described in subsections (b)(4), (b)(5) and (b)(6) of this section: six months to three years.
 - d. For commission of an offense as described in subsection (b)(7) of this section: one to two years.
 - e. For commission of an offense as described in subsection (c)(1) of this section: one to two years.
 - f. For commission of an offense as described in subsection (c)(1) of this section: two to five years.
 - g. For commission of an offense as described in subsection (c)(3) of this section: two to five years.
- (10) After imposition of such suspension or debarment, the board of county commissioners, in its sole discretion, may reduce or may vacate such suspension or debarment, upon the vendor's written request, for reasons such as:
- a. Newly discovered material evidence;
 - b. Reversal of the conviction or civil judgment upon which the debarment was based;
 - c. Bona fide change in ownership or management;
 - d. Elimination of other causes for which the suspension or debarment was imposed; or
 - e. Other reasons the board of county commissioners deems appropriate.
- (11) The vendor's written request shall contain the reasons for requesting a reduction in the suspension or debarment period. The county administrator, with the assistance of the affected department, shall have 30 days from receipt of such request to submit a written response thereto. The decision of the board of county commissioners regarding a request made under this subsection is final and not appealable.
- (12) Scope of suspension or debarment. The following shall be scope of suspension or debarment under this section:
- a. The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, part-

ner, agent, employee, or other individual associated with a vendor may be imputed to the vendor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the vendor, or with the vendor's knowledge, approval, or acquiescence. The vendor's acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval, or acquiescence.

- b. The fraudulent, criminal, or other seriously improper conduct of a vendor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the vendor who participated in, knew of, or had reason to know of the vendor's conduct.
- c. The fraudulent, criminal, or other seriously improper conduct of any subcontractor associated with a vendor may be imputed to the vendor when the conduct occurred in connection with the subcontractor's performance of duties for or on behalf of the vendor, and the vendor has knowledge of, approved of, or acquiesced in this conduct. The vendor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- d. The fraudulent, criminal, or other seriously improper conduct of one vendor participating in a joint venture or similar arrangement may be imputed to other participating vendors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these vendors. Acceptance of the benefits derived from the conduct may be evidence of such knowledge, approval, or acquiescence.

(Code 1985, § 1-14-21(5); Ord. No. 98-47, 10-27-1998; Ord. No. 2009-18, § 5, 7-9-2009)

Sec. 46-103. Inspections and tests.

(a) The using department of the county shall inspect or arrange for the inspection of all deliveries of supplies, materials, equipment or contractual services to determine conformance with specifications set forth in the order of contract.

(b) The purchasing manager shall have the authority to require chemical and/or physical tests or samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. For such tests, the purchasing manager has the authority to make use of laboratory facilities of an agency of the county government or any outside laboratory. In the event the product fails such testing, the county may require the vendor to pay the county for any expense incurred in testing.
(Code 1985, § 1-14-21(6))

Sec. 46-104. Santa Rosa Island Authority.

For all purchases by and all work and services to be performed for the Santa Rosa Island Authority which are subject to the provisions and bid requirements of this article, the general manager of the Santa Rosa Island Authority shall approve bid specifications, shall fix the dates for submitting bids and for final receipt of bids, and shall give notice, advertise, and call for bids in accordance with this article. A standing bid review committee for the Santa Rosa Island Authority comprised of the general manager and the treasurer of the Santa Rosa Island Authority shall review all bids and recommend the lowest most responsible and most responsive bidder to the Santa Rosa Island Authority. The Santa Rosa Island Authority shall accept the bid of the lowest most responsible and most responsive bidder, unless it rejects all bids because all offered bids are too high.

(Code 1985, § 1-14-22)

Sec. 46-105. Preferences to state businesses.

(a) When the lowest most responsible and most responsive bid is by a bidder whose place of business from where he bids is in a state which grants a preference for the purchase of personal property to a person whose place of business is in such state, then a preference may be given to the

lowest most responsible and most responsive bidder having a place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest most responsible and most responsive bidder has his place of business. However, this section shall not apply to projects for which federal aid funds are available. This section may be waived by the board of county commissioners for a particular purchase, and shall not apply to purchases exempted under section 46-44.

(b) All invitations for bids shall include notice of the provision of this section and such invitation shall require any bidder whose place of business is outside the state to accompany any written bid document with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its business entities whose places of business are in that foreign state in the letting of any or all public contracts. The failure of any such bidder to accompany its bid documents with such a written opinion may result in the rejection of the bid submitted by such bidder. (Code 1985, § 1-14-23)

Sec. 46-106. Multi-year lease and lease purchase agreements.

Without regard to the cost of any item, unless approved by the board of county commissioners in a manner consistent with law, multi-year lease or lease-purchase agreements are prohibited whether items are intended to be acquired through state bid or otherwise. This section shall not be construed to allow the expenditure or contracting for the expenditure of unbudgeted funds. (Code 1985, § 1-14-24)

State law reference—Similar provisions, F.S. § 287.084.

Sec. 46-107. Adoption of Construction Specifications Institute (CSI) Manual of Practice.

The CSI Manual of Practice is adopted by Escambia County as a standard body of guidance for use in the development and administration of construction contracts to the degree that it does not contravene existing federal or State of Florida laws, and local ordinances, rules, or regulations,

or contractual forms developed by the office of the county attorney. It is not intended that the contents of the CSI Manual of Practice to be directive, but rather that its recommendations, suggestions, and contents are be used as a focal point for increasing the uniformity and quality of the construction practices and procedures of Escambia County.

(Ord. No. 2001-9, § 12, 3-1-2001)

Sec. 46-108. Authorization for the use of electronic transmissions.

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the State of Florida's applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for (a) appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and (b) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying. (Ord. No. 2001-9, § 13, 3-1-2001)

Sec. 46-109. Competitive negotiation process; invitation to negotiate.

When it is determined by the purchasing manager that the use of competitive sealed bidding or the competitive proposal process are impractical or inappropriate, the county may utilize the invitation to negotiate as defined in section 46-45 as an alternative to either the competitive bid or the competitive proposal processes pursuant to F.S. § 287.057, for the procurement of commodities and contractual services. An invitation to negotiate shall be made available to all vendors simultaneously and must include a statement of the commodities or contractual services sought, the time and date for the receipt of replies and of the public opening, and all terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the reply. If renewal of the contract is contemplated that fact must be stated in the invitation to negotiate.

(Ord. No. 2005-42, § 4, 9-1-2005)

Secs. 46-110—46-125. Reserved.

DIVISION 4. CONSULTANTS*

Sec. 46-126. Definitions.

As used in this division, the word "consultant" means an individual who: agrees to provide certain services under a contract with the county, works according to his own methods, is not subject to the direction and control of the county except as to the results of the work, does not receive a salary from the county, does not accrue annual or sick leave, frequently does the majority of the work in his own office instead of in a county office, and does not receive county benefits.

(Code 1985, § 1-9.5-1)

Cross reference—Definitions generally, § 1-2.

Sec. 46-127. Conflicts of interest prohibited.

No consultant under contract with the county shall engage in any employment or contractual relationship with any entity, which employment or contractual relationship would or could be adverse to the county or which would or could interfere with the consultant's work on behalf of the county. Such relationship includes, but is not

*State law references—Code of ethics for public employees, F.S. § 112.311 et seq.; consultants competitive negotiations act, F.S. § 255.087.

limited to, serving as a consulting or testifying expert witness in litigation against the county; representing persons or entities before any board or agency of the county; or any other contractual relationship of whatever kind or nature in which the consultant uses his professional expertise or provides professional services in such a manner that a different person or entity benefits at the expense of the county in a given transaction between other person or entity in the county.
(Code 1985, § 1-9.5-2)

Sec. 46-128. Termination of contracts.

(a) The board of county commissioners of the county hereby expressly reserves the right to itself to terminate immediately a contract with any consultant whom the board of county commissioners determines to have violated section 46-127. Provided, however, that consultants may apply to the board of county commissioners to waive compliance with section 46-127, provided such application:

- (1) Is made at least 30 days prior to the commencement of the violative contractual relationship giving rise to the conflict of interests; and
- (2) Advises the board of county commissioners, in writing, the exact nature of the work to be performed, the entity for whom the work will be performed, and the nature of any potentially adverse relationship between the county and such entity. Nothing in this section shall vest in any consultant the right to have compliance with section 46-127 waived.

(b) The terms of this section shall be included in all contracts for professional consulting services to which the county is a party. Whenever possible under the terms thereof, all contracts existing as of the effective date of the ordinance from which this division is derived shall be amended to include this language.
(Code 1985, § 1-9.5-3)

**DIVISION 5. REAL PROPERTY
TRANSACTIONS**

Sec. 46-129. Short title.

This division will be known as and may be cited as the "Escambia County Real Property Transactions Ordinance."
(Ord. No. 2002-31, § 1, 7-18-02)

Sec. 46-130. Authority and purpose.

This division is enacted under authority of F.S. ch. 125 for the purpose of establishing procedures as provided by F.S. §§ 125.35 and 125.355 for the sale, purchase, leasing and donation of real property by and to Escambia County when it is determined by the board of county commissioners to be in the best interest of the county.
(Ord. No. 2002-31, § 1, 7-18-02)

Sec. 46-131. Sale of real property by private sale to adjacent property owners.

(1) The county may approve a private sale of real property when the board of county commissioners finds:

- (a) The real property is of insufficient size and shape to be issued a building permit for any type of development to be constructed on the property; or
- (b) The value of the property is \$15,000 or less, as determined by the records of the Escambia County Property Appraiser; and
- (c) The size, shape, location, and value of the property would make it of use only to one or more adjacent property owners.

(2) The county administrator or designee is authorized to negotiate the terms of the private sale for approval by the board of county commissioners.

(3) The county administrator or designee shall send notice of the county's intent to sell the property to adjacent property owners by certified mail, return receipt requested, giving the adjacent property owners ten business days from the date the notice is received to submit a letter of intent to purchase the property at the price set by

the county administrator. The purchase price must be no less than the value as shown on the tax rolls for the property to be sold.

(4) In the event two or more adjacent property owners notify the county administrator or designee of their desire to purchase the property, the county administrator or designee must notify the adjacent property owners by certified mail, return receipt requested, and require the submission of sealed bids within 20 days of the notice, to be opened on the 24th day, or as soon thereafter as possible, by the county administrator or designee.

(5) The board of county commissioners must approve the sale of the property to the highest bidder, or the board of county commissioners may reject all offers.

(6) All closing costs associated with the sale of the property must be paid by the purchaser, including but not limited to a title search, title insurance, documentary tax stamp, ad valorem taxes, recording fees, and fees for documents prepared by the county attorney's office to complete the sale.

(Ord. No. 2002-31, § 1, 7-18-02)

Sec. 46-132. Sale of real property through real estate broker.

(1) Where the board of county commissioners determines that it is in the best interest of the county to sell real property having a value in excess of \$20,000.00 as determined by written appraisal values or the assessed value as shown on the tax rolls for the property to be sold, the board of county commissioners may select a real estate broker by solicitation of requests for proposals from interested real estate brokers, pursuant to the procedures found in section 46-81 et seq., Escambia County Code of Ordinances, where not in conflict with the specifications in this division.

(2) The request for proposals must require, at a minimum, the following information:

- (a) The name of the registered broker and current license number of that broker.
- (b) The number of licensed sales people employed by the broker or the firm that is operating under the broker's license.

- (c) The number of offices maintained by the broker or the firm operating under the broker's license.
- (d) The advertising and marketing policies of the broker or the firm operating under the broker's license, and how those policies will be applied to the marketing of the county's property identified in the request for proposals.
- (e) Proposed commission schedule.
- (f) A statement that the broker has not been subject to disciplinary action by the Florida Department of Business and Professional Regulation during the previous six months.

(3) The county administrator shall designate a selection committee to evaluate and rank the responses to the requests for proposals.

(4) Once the selection committee ranks the responding brokers or firms, the county administrator or designee, after approval of the committee's ranking by the board of county commissioners, shall begin negotiations with the first-ranked real estate broker or firm for a listing agreement consistent with the provisions in subsection (5) below. In the event that a satisfactory agreement cannot be negotiated, the county administrator or designee shall begin negotiations with the second-ranked broker or firm.

(5) The broker listing agreement must be approved by the board of county commissioners and, at a minimum, provide for:

- (a) An exclusive listing for a time certain.
- (b) The commission to be paid.
- (c) The nature of the advertising of the property.
- (d) The legal description of the property.
- (e) The applicability of all disclosure laws.
- (f) Such other information or provisions appropriate or standard in the real estate industry, provided however, that any protection period is subject to negotiation.

(6) All offers received from the real estate broker must be in the form of a contract for sale and purchase delivered to the county administrator or designee. The county administrator shall present the contract for sale and purchase to the board of county commissioners by including the offer on the regular agenda for the next regularly scheduled meeting for its consideration and approval, or at a special meeting called by the chairman.

- (a) If the contract for sale and purchase is approved, the chair or vice-chair will be authorized to sign the contract for sale and purchase and all other documents necessary to closing.
- (b) If the contract for sale and purchase is rejected by the board of county commissioners, the board of county commissioners may authorize the county administrator or designee to continue negotiations through the broker. Any new contract for sale and purchase must be provided to the county administrator by the broker and the county administrator shall include the contract for sale and purchase to the board of county commissioners on the regular agenda for the next regularly scheduled meeting for its consideration and approval, or at a special meeting called by the chairman.
- (c) If the contract for sale and purchase is rejected by the board of county commissioners, the broker shall be informed of the decision within five days of the meeting. The broker will have the opportunity to provide the board of county commissioners with other contracts for sale and purchase for the term of the listing.

(Ord. No. 2002-31, § 1, 7-18-2002; Ord. No. 2003-42, § 1, 8-21-2003)

Sec. 46-133. Sale of real property by public auction.

(1) Where the board of county commissioners determines that it is in the best interest of the county to sell real property having a value of \$20,000.00 or more as determined by written appraisal values or the assessed value as shown

on the tax rolls for the property to be sold, the board of county commissioners may select an auction company by solicitations of requests for proposals from interested auction companies, pursuant to the procedures found in section 46-81 et seq., Escambia County Code of Ordinances, where not in conflict with the specifications in this division.

(2) The request for proposals must require, at a minimum, the following information:

- (a) The name of the auction company.
- (b) The number of persons employed by the auction company.
- (c) The advertising and marketing policies of the auction company, and how those policies will be applied to the marketing of the county's property identified in the request for proposals.
- (d) Proposed commission or compensation schedule.
- (e) A statement that the auction company has not been subject to disciplinary action by the Florida Department of Business and Professional Regulation during the previous six months.

(3) The county administrator shall designate the selection committee to evaluate and rank the response to the request for proposals.

(4) Once the selection committee ranks the responding auction companies, the county administrator or designee, after the approval of the committee's ranking by the board of county commissioners, shall begin negotiations with the first-ranked auction company for an agreement consistent with the provisions in subsection (5) below. In the event that a satisfactory agreement cannot be negotiated, the county administrator or designee shall begin negotiations with the second-ranked auction company.

(5) The agreement must be approved by the board of county commissioners and, at a minimum, provide for:

- (a) The time period in which the property will be marketed and auctioned.

- (b) The commission or compensation to be paid.
- (c) The nature of the advertising of the property.
- (d) The legal description of the property.
- (e) Method of qualification of potential purchasers.
- (f) Minimum bid and terms of sale.
- (g) The applicability of the disclosure laws.
- (h) Such other information or provisions appropriate or standard in the auction industry.
- (i) Provisions regarding how and when the sale proceeds will be paid to Escambia County.

(Ord. No. 2002-31, § 1, 7-18-2002)

Sec. 46-134. Sale of real property by bid process.

Notwithstanding other sections of this division, whenever the board of county commissioners determines that it is in the best interest of the county to sell real property, the board may direct the utilization of the procedures for requiring bids on the property found in F.S. § 125.35(1) and section 46-81 et seq., Escambia County Code of Ordinances.

(Ord. No. 2002-31, § 1, 7-18-2002)

Sec. 46-135. Sale or lease of real property by request for proposals (RFP) process.

Whenever the board of county commissioners determines that it is in the best interest of the county to sell or lease real property owned by the county and the use of the methods set forth in sections 46-132 through 46-134 is not suitable or desirable, the board may direct the utilization of the request for proposals (RFP) process in accordance with the standards and procedures hereinafter set forth:

- (a) The county administrator or designee shall first advise the board at a public meeting that he wishes to utilize the RFP method for sale or lease of certain county property setting forth the reasons therefore;

- (b) Upon approval by the board, the county administrator or designee shall proceed to issue the RFP, evaluate the proposals and submit a recommendation regarding such proposals to the board of county commissioners, in accordance with the provisions set forth in sections 46-88 through 46-90 and 46-101 of this chapter.
(Ord. No. 2004-37, § 1, 7-22-2004)

Sec. 46-136. Exemptions.

The provisions of this division do not apply to the exchange of county real property pursuant to F.S. § 125.37, or the sale of real property pursuant to F.S. § 125.38.

(Ord. No. 2002-31, § 1, 7-18-2002; Ord. No. 2004-37, § 1, 7-22-2004)

Sec. 46-137. Lease of county property.

(1) Where the board of county commissioners determines it is in the best interest of the county to lease real property belonging to the county, the procedures for invitation for bids found in F.S. § 125.35(1), and section 46-81 et seq., Escambia County Code of Ordinances must be utilized.

(2) Notwithstanding subsection (1) above, if the prospective lessee is the United States or any department or agency of the United States, the state or any political subdivision or agency of the state or political subdivision, or any municipality of the state, or any nonprofit corporation or organization organized for the purposes of promoting community interest and welfare, then:

- (a) The prospective lessee may apply to the board of county commissioners for a lease of the real property belonging to the county.
- (b) If the board of county commissioners is satisfied that the use of the property is in the best interest of the county and the property is not needed for county purposes, the board of county commissioners may authorize entry into a lease for rent, whether nominal or otherwise, as the board of county commissioners may fix, regardless of the actual value of the lease.

(c) The board of county commissioners must adopt a resolution setting forth the following:

1. The fact of the application;
2. The purpose for which the property is to be used; and
3. The rent and term of the lease.

(Ord. No. 2002-31, § 1, 7-18-2002; Ord. No. 2004-37, § 1, 7-22-2004)

Sec. 46-138. Rezoning of county real property to be sold or leased.

Whenever the county administrator requests the sale or lease of county owned real property, if the property is classified for governmental use, a rezoning of the property must be done according to the following procedure:

- (a) The county administrator or designee shall initiate the request with no filing fee requirement for rezoning, the real property to be converted to private ownership which is classified for governmental use to another zoning classification.
- (b) All rezonings must be carried out pursuant to Article II of the Land Development Code.

(Ord. No. 2002-31, § 1, 7-18-2002; Ord. No. 2004-37, § 1, 7-22-2004)

Sec. 46-139. Acquisition of real property by the county.

(1) Prior to the acquisition of real property by the county by purchase, lease, donation, or exchange, the county administrator or designee shall:

- (a) Determine if the property is within the scope of the county's future space plan, and determine the impact on the future space plan.
- (b) Determine the costs to the county of acquiring the property, as well as the costs related to maintaining the property, more specifically as described in this section.

(2) Procedures for acquisition of property are as follows:

- (a) If the value of the property is less than \$250,000.00, the county administrator or designee shall obtain at least one appraisal from a real estate appraiser licensed by the State of Florida. If the value of the property is \$250,000.00 or more, the county administrator or designee shall obtain at least two appraisals. However, after obtaining the first appraisal, the board may waive the requirement for a second appraisal and instead accept an appraisal review from a real estate appraiser that confirms the accuracy of the initial appraisal. Any appraisal or appraisal review required by this section shall be purchased by the county, at its sole expense, from an appraiser retained by the county. Appraisals are not required for donations or acquisitions where the value of the consideration paid by the county is less than \$20,000.00.
- (b) An environmental site assessment, Phase I, and Phase II if indicated by the Phase I environmental site assessment, shall be obtained by the county, provided however, the county administrator may waive this requirement with the written concurrence of the neighborhood and environmental services division for reasons specifically stated.
- (c) A physical inspection of the property must be completed by the facilities management department and risk management department with the utilities turned on, with a written report to the county administrator or designee on the HVAC, electrical, plumbing, fire suppression systems, available utilities and communications systems, roof, general condition of the interior and exterior of any buildings, drainage, grounds maintenance, security, building code compliance, compliance with the American with Disabilities Act, and any other inspections deemed appropriate by the county administrator or designee.

- (d) A survey or boundary map, as determined by the county administrator or designee, must be obtained and reviewed by the county engineering department.
- (e) The office of management and budget shall provide verification of the funding source for the purchase or lease.
- (f) The county administrator or designee shall evaluate the above reports and negotiate a purchase or lease price with the prospective seller. The county administrator may enter into an option contract to purchase or lease the property, subject to approval of a contract for sale and purchase or a lease by the board of county commissioners. The board of county commissioners will be under no obligation to exercise the option.
- (g) If the negotiated purchase price of the property exceeds the average of the appraisal(s), the board of county commissioners is required to approve the purchase by an extraordinary vote (2/3).
- (h) The county attorney's office shall prepare or review legal documents necessary to the negotiation and purchase or lease of the property. Title insurance is required for all purchases of \$20,000.00 or more, unless the board of county commissioners determines otherwise. Title insurance may be obtained for purchases less than \$20,000.00.

(3) Notwithstanding the provisions of this section, if the county is acquiring property by purchase or donation, and if the property is valued at less than \$20,000.00, then the county administrator or designee shall negotiate the purchase price and terms, and may waive compliance with all or some of the procedures described in subsection (2), with the negotiated purchase or donation to be approved by the board of county commissioners.

(4) If the board of county commissioners determines that it is in the best interest of the county to negotiate for the purchase of a parcel of property confidentially, the county administrator or designee shall negotiate the proposed purchase

pursuant to the terms of F.S. § 125.35(5); provided however, the requirements of subsections (1) and (2) of this section must be followed. (Ord. No. 2002-31, § 1, 7-18-2002; Ord. No. 2004-37, § 1, 7-22-2004; Ord. No. 2006-74, § 1, 9-21-2006; Ord. No. 2010-21, § 1, 7-8-2010)

Secs. 46-140—46-150. Reserved.

ARTICLE III. CAPITAL IMPROVEMENT PROJECTS*

DIVISION 1. GENERALLY

Sec. 46-151. Definitions.

As used in this article the following words and phrases shall have the meanings respectively ascribed to them in this section:

Bonds means any revenue bonds authorized to be issued pursuant to this article.

Capital improvement projects means, but shall not be limited to, any one or more or any combination of the following: Courthouses or jails, or other public buildings and related facilities, and any and all real or personal property which a county may own in its governmental or proprietary capacity, and for additional parking required for the judicial building and for off-street parking for the public.

Costs means the cost of acquisition of sites; legal, fiscal, architectural and engineering fees; provision for debt service reserves, bond discount, interest during the construction period, the expense of the issuance, authorization and sale of the bonds, including the cost of advertisements, notices and other proceedings in connection therewith; and such other expenses as are necessary or incidental to the costs authorized under this article.

County revenues means any revenues of the county collected by or accruing to the county other than by the exercise of the ad valorem taxing power of the county or taxation in any form on

*State law reference—County bonds, F.S. ch. 130.