

BY BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 15-26

AN ORDINANCE BY THE PASCO COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING, REORGANIZING AND RESTATING CHAPTER 2, ARTICLE IV, DIVISION 2, SUBDIVISIONS I AND II OF THE PASCO COUNTY CODE OF ORDINANCES RELATING TO PURCHASING AND CHAPTER 2, ARTICLE IV, DIVISION 5 OF THE PASCO COUNTY CODE OF ORDINANCES RELATING TO DESIGN-BUILD CONTRACTS FOR PUBLIC CONSTRUCTION PROJECTS; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section (1)(f) of the Florida Constitution and Sections 125.01(l), (m) and (w), Florida Statutes, Pasco County (County) has broad home rule powers to enact ordinances to protect health, life, and property, and to preserve and enforce the good government, order and security of such counties and its inhabitants; and

WHEREAS, there have been changes in state law during the period since Chapter 2 of the County Code of Ordinances was adopted which have impact on how procurement should be handled going forward; and

WHEREAS, the Board herein finds that appropriate revisions, amendments and supplements to Chapter 2 of the Pasco County Code of Ordinances dealing with the public procurement process applicable to County purchases to further enhance the procedures by which such procurement matters are handled, evaluated, and awarded would serve a public purpose; and

WHEREAS, the Board herein determines that because of the number of changes and the necessity to re-order the various sections of the existing effected Code that a comprehensive amendment and restatement of would also serve a public purpose by improving the provisions relating to the County's procurement processes so as to further encourage the participation of vendors and contractors interested in doing business with the County in future solicitations;

NOW THEREFORE BE IT ORDAINED by the Board of County Commissioners of Pasco County, Florida, that Article IV, Division 2, Subdivisions I and II, Sections 2-91 through 2-126 (inclusive) and Division 5, Sections 2-190 through 2-195 (inclusive) of the Pasco County Code Ordinances are hereby amended, reorganized and restated as follows:

SECTION 1. WHEREAS CLAUSES. The foregoing WHEREAS clauses are hereby adopted as legislative findings of the Board of County Commissioners and are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. Article IV, Division 2, Subdivision I and II and Division 5 are amended, reorganized and restated as follows:

Sec. 2-91. - Short title.

This division shall be known as the Purchasing Ordinance of Pasco County, Florida.

Sec. 2-92. - Definitions.

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

Architectural and Engineering Services means (a) professional services of an architectural or engineering nature as defined by Florida law, which are required to be performed or approved by a person licensed, registered, or certified to provide such services; (b) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and (c) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

Board of County Commissioners or Board means the Pasco County Board of County Commissioners.

Contractual services means and includes all telephone; gas; water; electric lights and power service; towel and cleaning services; lease and concession services; services involving demolition of buildings; rental, repair or maintenance of equipment, machinery and other county-owned properties; and other like services. The term "services" shall not include professional

services which are unique in their nature and not subject to competition nor does it include insurance policies, insurance consultants or administrative services nor those services covered by the state Consultants' Competitive Negotiations Act (F.S. § 287.055). Professional services include, but are not limited to, attorneys, physicians, real estate appraisers, insurance consultants, insurance administrators, geologists, hydrogeotechnical consultants and certified public accountants.

County means the Pasco County Board of County Commissioners, the constitutional officers (at their discretion), and agencies of the County.

County Administrator or Administrator means the County Administrator or designee.

County Attorney means the County Attorney or designee who shall have the sole authority to approve or recommend approval of outside legal and/or legal-related services.

Design-bid-build means a project delivery method in which the County sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.

Design-build means a project delivery method in which the County enters into a single contract for design and construction of an infrastructure facility.

Design-build-operate-maintain means a project delivery method in which the County enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period. All or a portion of the funds required to pay for the services provided by the contractor during the contract period are either appropriated by the County prior to award of the contract or secured by the County through fare, toll, or user charges.

Design-build-finance-operate-maintain means a project delivery method in which the County enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. No County funds are appropriated to pay for any part of the services provided by the contractor during the contract period.

Electronic means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Invitation for Bids (IFB) means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

Legal Services are services that include, but are not limited to, retaining services of law firms, outside counsel, expert witnesses, trial consultants or similar persons or firms deemed by the County Attorney, for any reason, as necessary to address the County's legal needs. Such firms or persons shall be selected by the County Attorney.

Public works or improvements means and includes, but is not necessarily limited to construction contracts for: County-owned buildings; roads, highways, drainage; storm sewers; wastewater treatment plants; water treatment plants; water production facilities; utility lines; parks and recreational facilities; any and all facilities for the County's solid waste disposal and resource recovery system, including the operations thereof; and other public works and improvements of a similar nature.

Purchasing Director or *Director* shall mean the Purchasing Director or designee. The Purchasing Director is the person responsible for purchasing and procurement for the County as designated by the County Administrator. If the County Administrator makes no designation, the County Administrator shall function as the Purchasing Director.

Request for Proposals (RFP) means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Request for Statements of Qualifications (RSQ) means all documents, whether attached or incorporated by reference, utilized for soliciting qualifications for a qualifications-based selection process.

Request for Quotations means all documents, whether attached or incorporated by reference, utilized for soliciting quotations.

Responsible bidder or offeror means a bidder or offeror who has reasonable capability in all respects to perform fully the contract requirements and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment and credit which will ensure good-faith performance.

Responsive bidder or offeror means a bidder or offeror who has submitted a response to a solicitation, which conforms in all material respects to the requirements set forth in the same.

Supplies means and includes all supplies, materials and equipment.

Signature means a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature in accordance with Florida Law.

Unsolicited Proposal means a written but informal bid, proposal, or quotation that is submitted on the initiative of the submitter and not in response to any formal or informal request.

Using agency means any department, division, agency, commission, board, committee, authority or other unit under the direct or indirect control of the Board of County Commissioners using supplies or procuring contractual services as provided in this division. Nothing contained in this division shall be construed as requiring the County's constitutional officers (Clerk of the Circuit Court and County Comptroller, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector) to be covered by this division. However, the services of the County Purchasing Department and Purchasing Director shall be made available for their use, at their option.

Written or In Writing means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Sec. 2-93. - Purposes.

Purposes of this division are to:

- (a) Prescribe the manner in which the County shall control the purchase of materials, supplies, equipment and certain contractual services of the County;
- (b) Provide for the fair and equitable treatment of all persons involved in public purchasing by the County;
- (c) Maximize the purchasing value of public funds in such procurement;
- (d) Provide safeguards for maintaining a purchasing system of quality and integrity; and
- (e) Maintain a high ethical standard for all officers and employees of the County in connection therewith.

Sec. 2-94. - Responsibility for purchasing.

The Purchasing Director shall direct and supervise all purchasing for the County as provided in this division.

Sec. 2-95. - Purchasing Director.

- (a) *Appointment.* The Purchasing Director shall be appointed by the County Administrator in accordance with the personnel policies and laws in effect. The Purchasing Director shall have relevant, recent experience in public procurement and in the large-scale procurement of supplies, services, or construction, and shall be a person with demonstrated executive and organizational ability.
- (b) *Powers and duties.* The Director shall direct and supervise all County purchasing functions provided for in this division, shall perform all duties required by law and shall have the powers and duties prescribed by this division. The Director may appoint a designee or designees to perform any of the Director's powers and duties set out in this division.
- (c) *Scope of purchasing authority.* The Director shall have the following powers and duties:
 - (1) *Purchase or contract.* The Director shall perform the duties specified in this division in connection with all purchases or contracts including, but not limited to, for all materials, supplies, equipment, construction and contractual services needed by any using agency which derives its support wholly or in part from the County. The term "contract" also means purchase orders and agreements utilized by the county to bind the parties to a specific purchase. The Purchasing Director shall approve all purchase orders, regardless of amount, for all goods and services procured as authorized by this division.
 - (2) *Exceptions prohibited.* The authority of the Director to negotiate all purchases for all using agencies shall not be abridged, except as required by law.
- (d) *Other powers and duties.* In addition to any other powers and duties conferred by this division, the Director shall:
 - (1) *Minimum expenditure.* Act to procure for the County the highest quality supplies and contractual services meeting the needs of the County in a cost-efficient manner, while protecting the County's interest in procuring quality supplies and contractual services.

(2) *Encourage competition.* Endeavor to obtain as full and open competition as possible on all purchases and sales. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the County's needs, and shall not be unduly restrictive.

(3) *Policies and procedures.* Promulgate and amend, when necessary, policies and procedures governing the procurement of goods and services in accordance with and within the scope of this division. Copies of the resulting policies and procedures shall be distributed to the using agencies and available for review in the office of the Purchasing Director.

(4) *Purchasing analysis.* Keep informed of current developments in the field of purchasing, prices, market conditions and new products. Secure for the County the benefits of research conducted in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition and private businesses and organizations.

(5) *Purchasing Manual.* Prescribe and maintain a purchasing manual for all using agencies. The Purchasing Manual shall include all approved policies and procedures promulgated by the Purchasing Director.

(6) *Forms.* Prescribe and maintain such forms as shall be found reasonably necessary to the operation of this division.

(7) *Bulk purchases.* Exploit the possibilities of buying in bulk to take full advantage of discounts.

(8) *Tax exemptions.* Act to procure for the County all tax exemptions to which it is entitled.

(9) *Cooperation.* Cooperate with using agencies to secure for the County the maximum efficiency in budgeting and accounting.

Sec. 2-96. - Standardization, cooperative purchasing and governmental contracts.

(a) Where standardization is determined to be desirable and advantageous by the Purchasing Director, the purchase of materials, supplies and equipment and certain contractual services may be by negotiation provided the purchase is in the best interest of the County and approved as set forth in Section 2-110.

(b) The Director, on behalf of the County, shall have the authority to join with other units of governments in cooperative purchasing ventures when the best interest of the County would be served thereby and such cooperative purchasing is not prohibited by law.

(c) Unless otherwise prohibited by law, State of Florida contracts or Federal General Services Administration (GSA) contracts may be used in lieu of the source selection methods provided in Section 2-100. Purchases in any amount may be made against those contracts, provided they are in the best interest of the County and approved as set forth in Section 2-110.

(d) Unless prohibited by law, the Director shall have the authority to utilize or "piggyback" competitively awarded contracts or purchases from other units of government provided that the competitive process used was materially consistent with the applicable procedures prescribed in

this division, the evaluation and award was fair and equitable, the purchase is in the best interest of the County and approved as set forth in Section 2-110.

Sec. 2-97. - Inspection and testing.

(a) *Generally.* The Purchasing Director shall inspect, supervise the inspection, or cause to be inspected all deliveries of supplies or contractual services to determine their conformance with the specifications set forth in the order or contract.

(b) *Inspection by using agency.* The Director shall have the authority to require using agencies to inspect all deliveries made to the same through policies and procedures, which the Director may prescribe.

(c) *Tests.* The Director shall have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the Director shall have the authority to make use of laboratory facilities of any agency of the County or of any outside laboratory without the approval of the County Administrator or Board of County Commissioners.

Sec. 2-98. – Surplus property and scrap metal.

(a) *Report of surplus property.* Pursuant to Ch. 274, F.S., as amended, all agencies under this division shall report all surplus property to the Purchasing Director, as needed and in such form as shall be prescribed. The term "property" in this section shall mean all tangible personal property, owned by the County, of a nonconsumable nature in accordance with Ch. 274, F.S. Surplus property may include, but is not limited to, furniture, fixtures, apparatuses, vehicles and equipment, which have become obsolete and/or no longer needed by the County.

(b) *Transfer.* The Purchasing Director shall have the authority to transfer surplus property to other using agencies.

(c) *Sale of surplus property.* The Purchasing Director shall have authority to sell or trade-in surplus property that is deemed to have a reasonable value of less than \$5,000.00. All sales of surplus property under this section shall be publicly advertised and accomplished by sale to the highest responsive, and responsible bidder or by public auction in conformance with state law. Sales of surplus property under this section in excess of \$5,000.00 shall require approval of the Board of County Commissioners.

(d) *Sale of scrap metal and related materials.* The Purchasing Director shall have the authority to sell scrap metal and related materials including, but not limited to, vehicle parts, water meters, aluminum sign blanks, copper wiring, assorted steel and iron, which are in the county's possession (regardless of the source) and not specifically listed as county-owned assets. Such scrap metal and related materials shall be considered surplus property and shall not require formal declaration as surplus by the Board of County Commissioners. All sales of scrap metal and related materials under this section shall be publicly advertised and accomplished by sale to the highest responsive and responsible bidder (one time or ongoing, multi-year award) or by public auction in conformance with state law.

Sec. 2-99. - Central stores.

(a) *Control and supervision.* The Purchasing Director shall control, supervise and administer the County's Central Stores.

(b) *Accounting procedure.* Requisitions for supplies in central stores shall be credited by the Director to Central Stores revolving fund by a charge against the appropriation of the using agency.

(c) *Inventory.* The Director shall maintain a perpetual inventory record of all materials, supplies or equipment stored in Central Stores.

Sec. 2-100. – Methods of source selection.

Unless otherwise authorized by law, all purchases shall be awarded by one of the following methods:

- (a) Section 2-101 (emergency purchases)
- (b) Section 2-102 (competitive sealed proposals)
- (c) Section 2-103 (sole source and noncompetitive purchases)
- (d) Section 2-104 (open market procedures for purchases of \$50,000.00 or less)
- (e) Section 2-105 (competitive sealed bids)
- (f) Section 2-106 (architectural and engineering services)
- (g) Section 2-107 (purchase of infrastructure facilities and services)
- (h) Section 2-108 (design-build contracts)
- (i) Section 2-109 (unsolicited proposals)

Sec. 2-101. - Emergency purchases.

(a) *Generally.* Notwithstanding any other provisions of this division, emergency purchases of goods and services may be made in the event of a disruption of essential operations, or when there exists a threat to the public's health, welfare or safety, or when the protection or preservation of public property would not be possible through normal purchasing procedures; provided that such emergency purchases shall be made with such competition as is practical and practicable under the circumstances. A written determination of the basis for the emergency purchase and why a particular vendor was selected shall be prepared and filed accordingly.

(b) *Authority.*

(1) In an apparent emergency which requires immediate purchase of goods and/or services, of which are not expected to exceed \$100,000.00, the Purchasing Director shall, at the direction of the County Administrator, have the authority to secure or cause to be secured, at the lowest obtainable and reasonable price(s), the goods and/or services necessary to alleviate the emergency.

(2) In an apparent emergency which requires immediate purchase of goods and/or services, the County Administrator shall have the authority to secure or cause to be secured, at the lowest obtainable and reasonable prices, the goods and/or services, the price of which do not exceed \$100,000.00 total, which are necessary to alleviate the emergency.

(3) In an apparent emergency which requires immediate purchase of goods and/or services, which are not expected to exceed \$100,000.00 for legal-related expenditures required by his/her office and for expenditures related to the operation of his/her office, the County Attorney shall have the authority to secure or cause to be secured at the lowest obtainable and reasonable price(s), the goods and/or services necessary to alleviate the emergency encountered by his/her office.

(4) All emergency purchases that exceed \$100,000.00 shall be reported at the next regularly scheduled meeting of the Board of County Commissioners, if possible, but no later than the second regularly scheduled meeting of the Board of County Commissioners following the date of the emergency purchase.

(c) *Disaster preparedness.* The County Administrator may grant the Purchasing Director unequivocal authority to bypass the purchasing procedures in this division to secure items required in preparation for and/or response to a disaster, potential or otherwise. Purchases of goods and services, including food and water, made in preparation for or in response to the occurrence of a natural or manmade disaster or civil unrest, where availability rather than price is the controlling factor, are exempt from this division.

(d) *Emergency procedure.* The Purchasing Director, pursuant to Section 2-95(d)(3), shall prescribe by policy under which emergency purchases by heads of using agencies may be made.

Sec. 2-102. - Competitive sealed proposals.

(a) When the Purchasing Director determines that the use of competitive sealed bidding under this division is either not practicable or not advantageous to the County, the competitive sealed proposals method may be used.

(b) Proposals shall be solicited through a Request for Proposals.

(c) Adequate public notice of the Request for Proposals shall be given in the same manner as provided for competitive sealed bidding.

(d) The Request for Proposals shall state the relative importance of price and other evaluation factors.

(e) As provided in the Request for Proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to ensure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

(f) Awards shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Awards shall be made by the Purchasing Director, County Administrator, County Attorney, or Board of County Commissioners in accordance with Section 2-110.

Sec. 2-103. - Sole source and noncompetitive purchases.

(a) Definitions:

(1) *Sole source purchase.* A sole source purchase exists when research has determined there is only one potential or reasonable provider for an item.

(2) *Noncompetitive purchase.* A noncompetitive purchase exists when it is advantageous for the County to declare a purchase noncompetitive because it will (1) result in verifiable financial savings to the County, (2) is a trial program, or (3) utilizing a competitive process will be detrimental to timely securing of necessary goods or services. More than one potential supplier may exist for a good or service; however, the requesting agency shall provide the Purchasing Director with written justification that clearly describes and documents the advantages of declaring the purchase noncompetitive on the basis that only one reasonable and practicable source exists to supply a particular good or service. Such advantages may be based on, but not be limited to, uniqueness, vendor qualifications, and urgency of need.

(b) Sole source and noncompetitive purchases may be made for goods and/or services when they are only available from a sole source or when it is determined by the Purchasing Director, after conducting a good faith review of available sources, that there is only one practical, practicable and reasonable source, and securing competitive pricing is not either not feasible or advantageous for the County. All sole source and noncompetitive purchases must be in the public's best interest and shall be justified. The Purchasing Director shall conduct negotiations as to price, quantity, delivery and other pertinent terms. All negotiations shall be conducted in a manner that favors the public's best interest and maintains the County's integrity. Conditions for such sole source and noncompetitive purchases shall include, but not be limited to, the following:

(1) There exists only one responsible source;

(2) Although there exists more than one responsible source, a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the County, will otherwise injure the County's financial interests or will substantially impede the County's administrative functions or the delivery of services to the public;

(3) A particular material or service is required to maintain interchangeability or compatibility as a part of an existing integrated system;

(4) A particular material or service is required in order to standardize or maintain standardization for the purpose of reducing financial investment or simplifying administration;

(5) The material is perishable;

(6) The material qualifies as an object of fine art;

- (7) A particular material is required to match materials in use, so as to produce visual harmony;
- (8) A particular material is prescribed by a professional advisor or consultant;
- (9) A particular material is required to enable use by a specific individual; or
- (10) The material or service is the subject of a change order.
- (11) Renewal of software licenses and associated proprietary maintenance and support services.
- (12) Membership dues and fees for trade, professional, government and related associations.
- (13) Equipment maintenance, services, parts, and/or warranties, which are provided by manufacturers or authorized providers.
- (14) Utilities (water supply systems, sewer systems, pipelines, electric power transmission systems, natural gas systems, etc.) and other related natural monopolies (railroads, utility authorities, etc.).
- (15) Registrations, licenses, certifications and related products required by government and regulatory agencies.
- (16) Goods and/or services provided by other public entities (cities, counties, colleges, universities, etc.).
- (17) Advertising including, but not limited to, meeting notices, advertisement for bids, employment offerings, marketing campaigns (recycling, awareness, tourism, etc.), and other required advertisements in newspapers, magazines, and other media.
- (18) Postage and parcel services.
- (19) Medical supplies, medical equipment, and pharmaceuticals.
- (20) Purchase of library books, reference books and materials, electronic books, audio books, music materials, audiovisual materials, compact discs (CD), digital video disc (DVD), electronic resources and media (e.g. databases, etc.), periodicals and related subscriptions, education and personnel tests, textbooks, printed instructional materials films, filmstrips, videotapes, disc or tape recordings or similar audiovisual materials and for reference books, periodicals and printed library cards where such materials are purchased directly from the producer, publisher or authorized distributor, the owner of the copyright or patent, an exclusive agent within the state, a governmental agency or a recognized educational institution, provided they such purchases are in the best interest of the County.
- (21) Professional services that include, but are not limited to, physicians, real estate appraisers, insurance consultants, insurance administrators, geologists, hydrogeotechnical consultants, and certified public accountants.

(22) Legal services that include, but are not limited to, retaining services of law firms, outside counsel, process servers, investigators, expert witnesses, trial consultants or similar persons or firms deemed by the County Attorney, for any reason, as necessary to address the County's legal needs. Such firms or persons shall be selected by the County Attorney.

(23) Employee recruitment services that include, but are not limited to, temporary employment services, recruitment or headhunter services, and job posting services.

(c) *Award.* Sole source and noncompetitive purchases shall be awarded in accordance with Sec. 2-110.

Sec. 2-104. - Open market procedures for purchases of \$50,000.00 or less.

(a) *Generally.* Any purchases of a good or services, individually or collectively for a project or ongoing need, in which the total expenditure is estimated to be \$50,000.00 or less in a fiscal year or calendar year, shall be considered a small purchase and may be made without newspaper advertisement and without observing the procedure prescribed by this division for competitive sealed bids, competitive sealed proposals or other formal procedures. Purchase requirements shall not be artificially divided to avoid the competitive requirements prescribed in this section or for purchases over \$50,000.00.

(b) *Purchases over \$5,000.00.* Any small purchase that is estimated to exceed \$5,000.00 shall, whenever possible and reasonable, require solicitation of informal quotations. The Director shall solicit written quotations for purchases of \$5,000.00 or more using a vendors list that is current and openly available to all interested vendors. All quotations for purchases over \$5,000.00 shall be confirmed in writing. Award shall be made to the lowest, responsive, responsible vendor in accordance with the standards set forth in this division.

(c) *Purchases of \$5,000.00 or less.* All purchases of \$5,000.00 or less shall not require competition; however, in the interest of maximizing value and proper stewardship of public funds, competitive informal quotations should be secured whenever possible and reasonable. Whenever deemed to be in the County's best interest, the Purchasing Director, at his discretion, retains and shall have the authority to require the solicitation of written quotations regardless of the purchase amount. Award shall be made to the lowest, responsive, responsible vendor in accordance with the standards set forth in this division.

(d) *Public record.* The Director shall maintain all purchasing-related public records in accordance with Florida Law.

Sec. 2-105. - Competitive sealed bids.

(a) *Generally.* Any purchase of a good or services, individually or collectively for a project or ongoing need, except as otherwise provided in this division, in which the total expenditure is reasonably estimated to be greater than \$50,000.00 in a fiscal year or calendar year, shall require competitive sealed bids and award to the lowest responsive and responsible bidder; provided, however, that the Board of County Commissioners shall have the authority to waive the competitive sealed bid requirement if it deems it advisable to do so.

(b) Notice inviting bids.

(1) *Newspaper.* When statutorily required, a public notice inviting competitive sealed bids shall be published once in at least one (1) newspaper distributed in the County and at least five (5) full working days prior to the last day set for the receipt of bids. The newspaper notice shall include a general description of the goods or services to be purchased or items to be sold, shall state where bidding documents may be secured and the time and place for opening bids.

(2) *Vendors list.* The Purchasing Director shall solicit competitive sealed bids using a vendors list that is current and openly available to all interested vendors. Competitive bids shall be solicited in an open manner in which interested vendors are notified and treated equally without special advantage or benefit.

(c) *Bid deposits or surety.* When deemed necessary by the Director, bid deposits or surety shall be required with notice of the same being included in the public advertisement and invitation. Unsuccessful bidders shall be entitled to return of surety at such time when the Director deems advisable or when award has been made, whichever is earlier. A successful bidder shall forfeit any deposit or surety required by the Director upon failure of the bidder to enter into a contract within ten (10) business days after written notice of award. The Purchasing Director shall have the authority to extend the time required for the bidder to enter into a contract provided the bidder is acting in good faith and the Director deems that such forfeiture would otherwise delay or create a situation that is deemed not to be in the County's best interest.

(d) *Bids received.*

(1) *Sealed bids.* Bids shall be sealed and submitted by the time and date and in the manner prescribed in the invitation.

(2) *Opening.* Bids shall be opened in public at the time and place stated in the public notice and shall be witnessed and documented by at least two (2) County employees.

(3) *Tabulation.* A tabulation of all bids received shall be prepared and made available for public inspection in accordance with Florida Law.

(e) *Multi-Step Sealed Bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, the Purchasing Director may cause an Invitation for Bids to be issued (first step) requesting the submission of unpriced offers to be followed by the submission of priced offers (second step) by those bidders whose offers have been qualified under the criteria set forth in the first step.

Sec. 2-106. - Architectural and Engineering Services

All professional services covered by the Consultants' Competitive Negotiations Act (F.S. § 287.055), including, but not limited to, professional architectural and engineering services, shall be procured in the manner prescribed therein.

Sec. 2-107. - Purchase of infrastructure facilities and services.

(a) *Project delivery methods authorized.* Unless otherwise prohibited by law, the following project delivery methods are authorized for procurements relating to infrastructure, facilities and related services:

- (1) Design-bid-build (including construction management at-risk);
- (2) Operations and Maintenance;
- (3) Design-Build;
- (4) Design-Build-Operate-Maintain;
- (5) Design-Build-Finance-Operate-Maintain.

(b) *Source Selection Methods Assigned to Project Delivery Methods.* This Section specifies the source selection methods applicable to procurements for the project delivery methods identified in this section, except as provided in Section 2-104 (open market procedures for purchases of \$50,000.00 or less), 2-103 (sole source and noncompetitive purchases) and 2-101 (emergency purchases).

(1) *Design-Bid-Build.*

i. *Design: Architectural and Engineering Services.* The qualifications based selection process set forth in Section 2-106 (architectural and engineering services) shall be used to procure architectural and engineering services in design-bid-build procurements.

ii. *Construction: Competitive sealed bidding,* as set forth in Section 2-105 (competitive sealed bids), shall be used to procure construction in design-bid-build procurements, except where regulations authorize the use of competitive sealed proposals, as set forth in Section 2-102 (competitive sealed proposals), for contracts utilizing construction management at-risk.

(2) *Operations and Maintenance.* Contracts for operations and maintenance shall be procured as set forth in Section 2-100 (Methods of source selection).

(3) *Design-Build.* Contracts for design-build shall be procured as set forth in Section 2-108 (Design-build contracts).

(4) *Design-Build-Operate-Maintain.* Contracts for design-build shall be procured as set forth in Section 2-108 (Design-build contracts).

(5) *Design-Build-Finance-Operate-Maintain.* Contracts for design-build shall be procured as set forth in Section 2-108 (Design-build contracts).

Sec. 2-108. - Design-build contracts.

(a) *Authority.* The County is authorized and required by F.S. § 287.055(9)(c) to adopt an ordinance governing the award of design-build contracts.

(b) *Findings.* The Board of County Commissioners has hereby found, determined, and declared as follows:

(1) In view of the rapidly increasing demand for public construction projects in the County, methods for economizing time and costs in the construction of such projects need to be developed; and

(2) It may be both time and cost effective in certain instances to award a single contract for the design and construction of a public construction project.

(c) *Definitions.* The following terms, when used in this division, shall have the meanings ascribed to them in this section, except where context clearly indicates a different meaning:

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

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 general contractor or a certified or registered building contractor as the qualifying agent; or

(2) Is certified under F.S. § 471.023 to practice or to offer to practice engineering; certified under F.S. § 481.219 to practice or offer to practice architecture; or certified under F.S. § 481.319 to practice or to offer to practice landscape architecture.

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 and as may be applicable to the project:

- (1) The legal description of the site.
- (2) Survey information concerning the site.
- (3) Interior space requirements.
- (4) Material quality standards.
- (5) Schematic layouts and conceptual design criteria of the project.
- (6) Cost or budget estimates.
- (7) Design and construction schedules.
- (8) Site development requirements.
- (9) Provisions for utilities, stormwater retention and disposal.
- (10) Parking requirements.

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

landscape architect services, or engineering services in connection with the preparation of the design criteria package.

(d) Design criteria package.

(1) All design-build projects require a design criteria package to define the project parameters which are to be used to evaluate and govern the proposal. This design criteria package consists of concise performance-oriented preliminary drawings or specifications, or both, of the project. The criteria shall include the requirements set forth in F.S. § 287.055(2)(j).

(2) The design criteria package shall be prepared and sealed by a design criteria professional employed by or retained by the County.

(e) Design criteria professional.

(1) Acceptable entities who may act as the design criteria professional include, but are not limited to:

i. Licensed professional engineers, architects, and landscape architects employed by the County.

ii. A licensed engineering, architectural, or landscape architectural firm providing management services to the County where the County has the authority to request such services and the firm was selected pursuant to F.S. § 287.055.

iii. Engineering, architectural, and landscape architectural firms selected by the County pursuant to F.S. § 287.055 to be the design criteria professional.

(2) A design criteria professional who has been selected to prepare the design criteria package shall not be eligible to render services under a design-build contract executed pursuant to the design criteria package.

(3) The Purchasing Director shall consult with the design criteria professional concerning its [or his/her] duties which include, but are not limited to:

i. Evaluation of the responses or bids submitted by the design-build firms;

ii. Supervision or approval by the County of the detailed working drawings of the project; and

iii. Evaluation of the compliance of the project construction with the design criteria package.

(f) Selection procedures—In general.

(1) *Public announcement.* The Purchasing Director 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 as declared by the Board of County Commissioners. 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.

(2) *Legal qualification.* Any firm or individual desiring to provide design-build services to the board must first be determined legally qualified. Legal qualifications are:

i. *Certification.* 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; or must be properly certified to practice or to offer to practice engineering, architecture, or landscape architecture.

ii. The firm shall be duly qualified to perform its proposed service under any other applicable law.

(3) *Professional services selection committee.* A professional services selection committee appointed by the County Administrator shall be used to select design-build firms for recommendation to the Board of County Commissioners.

(4) *Solicitation.* The Purchasing Director shall develop a Request for Proposals (RFP) to solicit proposals from interested, qualified design-build firms. The RFP shall contain, as a minimum, the following:

- i. The design criteria package.
- ii. Basis and method for selection.
- iii. Required qualifications.
- iv. Terms and conditions of proposed agreement.
- v. Other items as required by procedures, laws, ordinances, or prevailing circumstances.

(g) *Same—Additional procedures.* In addition to the general selection procedures set forth in this article, the Purchasing Director shall implement selection procedures which shall include, but are not limited to:

- (1) Specific RFP requirements.
- (2) Oral presentations and/or interviews, where appropriate.
- (3) Method of scoring and ranking.
- (4) Accelerated procedures, where appropriate.
- (5) Method of evaluating performance of design-build firms.

Sec. 2-109. - Unsolicited Proposals.

The purpose of this section is to provide a fair and uniform format to submit unsolicited proposals to the County. This section establishes the procedures for the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

(a) Any person or legal entity may submit an unsolicited proposal for a facility or project that would be a qualified project as defined under Section 287.05712, Fla. Stat. or for a facility or

project with an estimated cost in excess of five million dollars (\$5,000,000) for which economic development funds are being requested or sought from the County for the development, design, establishment, enhancement, financing, construction, operation, maintenance, ownership, acquisition, or leasing of facilities and/or infrastructure which unsolicited proposals shall be governed by the provisions of this section serving a public purpose.

(b) The County shall require an initial processing fee which will be due at the time of submission of any unsolicited proposal. In addition to the initial process fee, the County reserves the right to charge the proposer an additional fee to cover the costs of processing, reviewing, and evaluating any unsolicited proposal, including a fee to cover the costs of attorneys, engineers, consultants, and financial advisors incurred by the County over and above the initial processing fee. The fees to be charged for the review of the proposal shall be established by resolution and will not be greater than the direct costs associated with evaluating the unsolicited proposal. "Direct costs" may include, but are not limited to: (i) the cost of staff time required to process, evaluate, review, and respond to the proposal, (ii) the costs of advertising the proposal, and (iii) the costs of attorneys, engineers, financial advisors and other consultants retained by the County to assist them in the review and evaluation process.

(c) Upon receipt of an unsolicited proposal or group of proposals and payment of any required fees by the proposer or proposers, the County Administrator shall note the date and time of receipt of such proposal and shall determine within ninety (90) days whether to accept the unsolicited proposal solely for the purpose of proceeding to publication as described below. Alternatively, the County Administrator shall reserve the right to reject the proposal within such ninety (90) days. The initial review time may be extended by mutual agreement of the County Administrator and the proposer. The Board of County Commissioners shall not grant more than one such extension. Final determination of whether to publish a proposal shall be made by the Board of County Commissioners. Following such determination, the County Administrator shall respond to the proposer in writing as to the acceptance or rejection of the unsolicited proposal. The proposal shall be published not later than thirty (30) days following acceptance by the Board of County Commissioners.

(d) In determining whether to accept the unsolicited proposal for publication, the County shall take into consideration such factors as: whether the proposed project is in the public's best interest; the costs of the proposed project and its funding sources; whether the proposed project may be accomplished through the use of County resources; the need for the proposed project; the scientific, technical or socioeconomic merits of the proposal; the contribution of the proposal to the County's goals and objectives; the qualifications, technical and management capabilities and experience of the proposer considered as a whole and considered in terms of the legal entities who may comprise the proposer or who may be serving as subcontractors to the proposer; the general reputation and financial condition of the proposer and its team members; the proposer's financial capacity to perform its obligations in the proposed contract; the financial viability and feasibility of the submitted proposal; the cost, if any, to the County to proceed with implementation of the proposal; and any other information the County deems appropriate for such initial evaluation.

(e) Any unsolicited proposal shall include sufficient detail and information for the County to evaluate the proposal in an objective and timely manner and to determine if the proposal meets the above criteria and benefits the County. If such proposal is not deemed by the County to be complete or in sufficient detail, it may be rejected by the County Administrator. The County Administrator shall inform the proposer in writing of the reason(s) for rejection and shall report the same to the Board of County Commissioners. It is not the intent or obligation of the County

Administrator to assist the proposer in completing the proposal and the County Administrator shall bear no responsibility to itemize or advise the proposer of the incomplete items or terms of the proposal.

(f) Any unsolicited proposal shall contain at a minimum the following items, as appropriate to the proposed project:

(1) Information and supporting documentation necessary for the County to evaluate the factors listed in paragraph (d) above.

(2) A site plan indicating the location of the project proposed, if applicable.

(3) A concise title and abstract of the proposed effort that contains the following information:

i. Objectives of the effort or activity.

ii. Method of approach and extent of the effort to be employed.

iii. The nature and extent of the anticipated results.

iv. The manner in which the work will help to support the accomplishment of the County's Strategic Objectives.

(4) The proposed schedule for development of the project and/or the proposed term for operation of the project, along with an estimate of the life cycle cost of the proposed proposal.

(5) A statement setting forth a method to secure any property interests required for the proposed project.

(6) A list of all public utilities, railroad lines, navigable waters and flight paths, if any, that will be crossed or affected by the proposed project and a statement of the plan to accommodate such crossings or effects.

(7) A statement setting forth the plans for developing, financing, constructing and/or operating and maintaining the project, including identification of any revenue, public or private, of proposed debt or equity investment proposed. The financing plans shall address any and all means by which the costs of the project will be borne by persons and/or agency(ies) other than the County.

(8) Names and addresses of persons who may be contacted for further information concerning the request.

(9) Information on how the project would benefit small and community based contractors within Pasco County.

(10) A financial plan for the entire time period of the proposed project.

(11) Performance guarantees, if any, and any proposed bonding to be provided by the proposer.

(12) The names of owners, directors and officers of the proposer, and such information as may be necessary to evaluate the qualifications of the critical personnel to be engaged in the project.

(13) Names and biographical information on the key personnel or firms who would be involved, including alternates.

(14) A listing of all proposed obligations and requirements of the County and any other governmental agencies, including, but not limited to, contributions to the project financing, staffing and permitting.

(15) Such additional material and information that a responsible public entity may reasonably expect, in order to review and evaluate such proposal.

(16) Brief description of the organization, previous experience, and relevant past performance of similar projects.

(17) The names, telephone numbers, and/or email addresses of County representatives that have been previously contacted regarding the project.

(18) Proposer's name and contact information, with the signature of the person authorized to represent and contractually obligate the entity.

(g) The County may seek the advice of internal staff or outside advisors, attorneys or consultants, or any combination thereof, with relevant experience in determining whether to accept the unsolicited proposal for publication and/or whether to enter into an agreement with the private entity or any competing proposer. At its option, the County may seek further clarification of the proposal.

(h) The County Administrator may reject or return an unsolicited proposal; however, the final decision to reject an unsolicited proposal, which is accompanied by the applicable fees, shall be subject to formal approval by the Board of County Commissioners. The County Administrator shall provide a written explanation of the reasons for rejection in the item requesting ratification. It is not the intention or obligation of the County to correct and/or assist in the preparation of an unsolicited proposal in any manner.

(i) If the County accepts the unsolicited proposal for publication, then the County Administrator shall publish a competitive solicitation statement that the County has received a proposal and will accept other proposals for the same project purpose. The timeframe within which other proposals may be accepted shall be determined on a project-by-project basis based on the complexity of the project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received; however the timeframe for allowing proposals must be at least twenty-one (21) days, but no more than one hundred and twenty (120) days after the initial publication. The County Administrator shall identify the procedures that will be used for evaluating the proposals in the notice or in a subsequent publication. Once the County decides to receive competing proposals, it may utilize its existing procedures for evaluating the proposals or may adopt project-specific procedures. The proposer shall be authorized to respond to the competitive solicitation and offer to the County a proposal in terms not less favorable to the County than the original proposal.

(j) Proposal documents submitted by private entities are public records under Chapter 119, Florida Statutes (Florida's Public Records Law), subject to any exemption otherwise provided by law. Any competing proposer may request and receive a copy of such proposal, and the County reserves the right to publish such unsolicited proposal and solicit competing proposals within the Response Period. Proposers are advised to familiarize themselves with the provisions of the Public Records Law and to seek legal advice regarding any proprietary or intellectual property rights which they may have in the proposal. In no event shall the County be liable to a proposer for the disclosure of all or a portion of a proposal submitted under this subsection.

(k) When the private entity requests that the County not disclose information that is exempt from the disclosure requirements of the Public Records Law, the private entity must (i) invoke the exemption when the data or materials are submitted to the County or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary, citing the specific exemption to Chapter 119, Florida Statutes, that the proposer believes applies. The County's determination as to confidentiality shall be final and binding upon the proposer. The proposer shall bear all attorneys' fees and costs associated with litigation for public access to claimed confidential documents. The County's need to maintain certain information confidential may be taken into consideration in the County's decision not to publish a solicitation.

(l) After the Response Period has expired, the County Administrator shall within forty-five (45) days, or longer, as specified in the advertisement, evaluate all the competing proposals and rank them in order of preference utilizing the criteria published for the specific project.

(m) The County Administrator may negotiate with the top-ranked proposers in the order of their ranking, and may, through such negotiations, aim to arrive at a mutually satisfactory agreement.

(n) If only one proposal is received, the County Administrator may negotiate in good faith and if he or she is not satisfied with results, may at his or her sole discretion terminate negotiations with the proposer.

(o) No proposer is guaranteed the award of a contract as a result of being favorably ranked for this project. The issuance of an unsolicited proposal shall create no rights in the proposer including rights as a bidder, under contract or intellectual property. The County, in its discretion, reserves the right to reject all proposals at any point in the process prior to the full execution of a contract with a proposer.

(p) The bid protest process provided for in this Code shall not apply to any decision to reject an unsolicited proposal but shall apply to any decision to recommend a contract award rejection, unless such protest is waived in accordance with this Code. The Cone of Silence provided for in this Code shall be imposed only following the publication of the competitive solicitation.

(q) Nothing in this ordinance shall affect the Board of County Commissioner's authority to recommend a waiver of competitive bids when such waiver is determined to be in the best interest of the County.

(r) The intent of this section is to be supplementary to the provisions of Section 287.05712, Fla. Stat.

Sec. 2-110. – Award.

(a) The Purchasing Director shall have the authority to award and approve purchases of \$15,000.00 or less. The County Administrator shall have the authority to award and approve purchases of \$50,000.00 or less. The County Attorney shall have the sole authority to approve purchases of \$50,000.00 or less for legal services and for goods and services required for the operation of his/her office. The Board of County Commissioners shall have the authority to award and approve all purchases regardless of dollar amount; however, the Board of County Commissioners must approve purchases that exceed \$50,000.00, unless otherwise exempted in this division. Awards shall be made to the lowest, responsive and responsible bidders. For the purposes of determining the lowest responsive and responsible bidders, in addition to price, the following may be considered:

- (1) The ability, capacity and skill of the bidder to perform.
- (2) Whether the bidder can perform within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) The quality and success of previous performance.
- (5) The bidder's or offeror's previous and existing compliance with the laws and ordinances relating to performance.
- (6) The sufficiency of the bidder's financial resources and ability to perform.
- (7) The quality, availability and adaptability of the offered goods or contractual services to the particular use required.
- (8) The ability of the bidder to provide future maintenance and support for the offered good or service.
- (9) The materiality of exceptions and conditions attached to the bid.

(b) *Award to other than the lowest, responsive and responsible bidder.* When the award is not given to the lowest, responsive and responsible bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the Purchasing Director and filed with the other papers relating to the transaction.

(c) *Contracts.* All formal agreements or contracts that require signature by an officer of the County for the procurement of goods and/or services shall be submitted to the Board of County Commissioners for approval and signature, unless signature authority is otherwise specifically delegated by the Board of County Commissioners.

(d) *Change orders.* All written alterations or change orders issued against a formal written agreement or contract, shall be submitted to the Board of County Commissioners for approval prior to execution of such alterations or changes. All written alterations or change orders issued against purchase orders, not involving a formal written agreement or contract, shall be submitted to the approving authority in accordance with Section 2-110, taking into account the proposed change.

Sec. 2-111. - Tie bids.

If two or more identical bids are received with regard to unit price or lump-sum total; are deemed responsive and responsible in accordance with Section 2-110; and the bidders' qualifications, quality of goods and/or services are deemed equal, a tie bid is deemed to exist. Where tie bids exist between bidders; one of which is a business whose principal place of business is located within the geographical boundaries of Pasco County and the other bidder is not, the bid shall be awarded to the bidder located within the County by the Purchasing Director, County Administrator, County Attorney, or Board of County Commissioners in accordance with Section 2-110. Where tie bids exist and no bidders are located within the County, award shall be made at the sole discretion of the Purchasing Director, County Administrator, County Attorney, or Board of County Commissioners in accordance with Section 2-110.

Sec. 2-112. - Cancellation of solicitations.

Invitations for Bids, Requests for Proposals, Requests for Quotations, Requests for Statements of Qualifications or other solicitations under this division may be cancelled by the Purchasing Director when it is deemed to be in the best interest of the County and/or to preserve the integrity of the process. Each solicitation issued by the County shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or part when it is in the best interest of the County. Notice of cancellation or rejection shall be distributed in the same manner that the notice of solicitation was distributed.

Sec. 2-113. - Rejection of bids and negotiations.

(a) If the lowest bid received under this subdivision is \$50,000.00 or less, the Purchasing Director and/or the County Administrator shall have the authority to reject any and all bids. The County Attorney shall also have the authority to reject any and all bids of \$50,000.00 or less received under this subdivision for legal services and for goods and services required for the operation of his/her office. The Board of County Commissioners shall have the authority to reject any and all bids under all circumstances.

(b) If the lowest responsive and responsible bid exceeds the budgeted amount and/or the Board of County Commissioners does not make additional funds available, the solicitation may be reissued and readvertised only after making sufficient changes in the specifications to bring the cost within the budgeted amount.

(c) If no bid is received or if the lowest responsive and responsible bid exceeds the budgeted amount, the Purchasing Director shall advise the appropriate authority designated in subsection (a) of this section, in writing, the condition and circumstances surrounding the bid. The appropriate authority may then authorize the Purchasing Director to purchase by negotiation. Purchase negotiations shall be conducted in a manner that favors the public interest, secures the lowest possible pricing, and preserves the integrity of procurement process.

Sec. 2-114. - Waiver of irregularities.

The Board of County Commissioners shall have the authority to waive any and all irregularities in any and all solicitations and responses to the same under this subdivision.

Sec. 2-115. - Unauthorized purchases, ethical conduct and sanctions.

(a) *Generally.* It shall be unlawful for any County Commissioner or employee to knowingly and willingly order any purchase or make any contract for goods and/or services, sell trade or dispose of any items within the purview of this division in the name of or on behalf of the County other than through the Purchasing Director, unless otherwise authorized in this section, and any purchase, order or contract made contrary to this division shall not be approved and the County shall not be bound thereby.

(b) *Exceptions prohibited.* There shall be no exception by any using agency under the Board of County Commissioners to subsection (a) of this section, except as may be specifically authorized by the County Administrator, in writing, stating the reasons for the exception.

(c) *Emergency.* This section shall not apply to any emergency purchase which is subsequently approved by the Purchasing Director or County Administrator upon justification by the using agency.

(d) *Ethical conduct and sanctions.* Any County employee who violates this section or Section 2-122, which concerns ethical conduct in public procurement, shall be subject to any and all sanctions provided for in the personnel policies adopted by the Board of County Commissioners and/or under state law.

Sec. 2-116. - Subdividing contracts or purchases.

No contract or purchase shall be subdivided to avoid the requirements of this division.

Sec. 2-117. - Requisitions and estimates.

(a) *Filing of requirements.* All using agencies, either by or with the authorization of the head of the department, under which the using agency operates, shall file with the Purchasing Director detailed requisitions of their requirements for supplies and contractual services in such manner, at such times, and for such future periods as the Director shall require.

(b) *Unforeseen requirements.* A using agency shall not be prevented from filing in the same manner with the Director at any time a requisition or estimate for any supplies and contractual services, the need for which was not foreseen when the detailed estimates were filed.

Sec. 2-118. - Encumbrance of funds.

Except in an emergency, as defined under Section 2-101, or usage of a valid County purchasing card subject to the provisions of a Board adopted purchasing card policy, the Purchasing Director shall not issue any order for delivery on a contract or open market purchase until the Office of the Clerk of the Circuit Court and County Comptroller shall have certified, through a manual or electronic preaudit review, that there is to the credit of the using agency concerned a sufficient unencumbered appropriation balance in excess of all unpaid obligations to defray the amount of such order. All purchasing card purchases must be used only for authorized purchases. Any use of the purchasing card that does not have a clear public purpose will require immediate reimbursement to the County and appropriate disciplinary action up to and including termination.

Sec. 2-119. – Bid, performance and payment bonds.

Vendors shall provide a corporate surety bond from a surety company authorized to do business in the State of Florida to guarantee the full and faithful performance of its bid and/or awarded contract obligations and the payment of labor and material expended pursuant to the contract whenever and in amounts as required under state law or by the County. Nothing in this section shall preclude alternative methods of security authorized under state law. All such bonds shall be approved as to form by the County's Risk Management Division and filed with the Clerk of the Circuit Court and County Comptroller for the Board of County Commissioners. If no surety bond is required under state law, the director shall have the discretion to require surety bonds, including bid and warranty bonds in the amount(s) deemed sufficient to protect the County.

Sec. 2-120. – Authorization for the use of electronic media and signatures.

The use of electronic media, including acceptance of electronic signatures, is authorized as set forth in applicable law, regulations, or policy 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.

Sec. 2-121. - Conflicts of interest.

(a) *Employee conflicts.* No County employee shall contract with or have any business dealings with the County whereby he may derive income or benefits other than those provided as remuneration from the County for his employment. However, no County employee or officer shall be prohibited from purchasing, at public auction authorized by law, used goods or materials from the County on the same basis as are all members of the public, provided that the employee or officer was not involved in the process of declaring property to be surplus. Further, the County may purchase from any employee or officer any real or personal property owned by such officer or employee which is determined at any regular public meeting to be needed for County business or public purpose, provided that no other source of such real or personal property is available and provided further that the consideration paid for such property does not exceed its market value.

(b) *Prohibiting contracts where conflicts are found to exist.* The County shall not engage in contracts with consultants or professionals whose prior record, work history and experience indicate ongoing business relationships that may be substantially in conflict with the duties and services that will be required by the County.

(c) *Standards and regulations for the determination of potential conflicting contractual obligations.* The Purchasing Director shall develop standards and regulations for determining potential conflicting contractual obligations, which may impair the performance of the professionals or consultants solicited by the County. The standards and regulations shall set forth appropriate requirements based upon the nature and scope of the services that are to be procured and shall be narrowly tailored so as to not unduly restrict competition, while assuring the County of undivided loyalty and services of the highest quality. The standards and regulations may require, but shall not be limited to, the inclusion of the following in a request for

proposals, invitation for bids, announcement or other solicitation or contract for professional or consulting services:

(1) An affidavit providing that the professional or consultant is not currently engaged or will not become engaged in any obligations, undertakings or contracts that will require the professional to maintain an adversarial role against the County or that will impair or influence the advice or recommendations provided to the County;

(2) The disclosure of all potentially conflicting contractual relationships and the full disclosure of contractual relationships deemed to raise a serious question of conflicts;

(d) *Debarment and suspension.* Any professional or consultant whose bid is rejected or who is denied a contract based solely upon a determination of the existence of conflicting contractual obligations may treat the determination as a debarment or suspension and may proceed as though debarred or suspended under the provisions of Section 2-126.

(e) *Consequences for violation of ethical standards.* In addition to any other penalty or consequence provided by law, any professional or consultant submitting false information to or on behalf of the County, disclosing or releasing information concerning an actual or planned procurement activity which information is deemed confidential or is otherwise not known to the general public or otherwise repeatedly failing to comply with the County's ethical standards and regulations shall be deemed to be in violation of this division and shall be subject to prosecution, state ethics complaints, reporting to professional or licensing authorities, contract cancellation, suspension and/or debarment, as the County deems appropriate.

(f) *Professional and consultant defined.* Professional or consultant as used in this section shall be deemed to include those contractors who, as individuals or duly organized business entities, have been or will be retained by the County for the purpose of providing recommendations or advice related to planning level or policy level decisions, or who will be engaged in the collection of data or research that will provide the basis for such decisions or future plans and actions of the County, as well as those who will be retained to provide design-related services or supervise and monitor the performance of contractors or subcontractors of any nature.

Sec. 2-122. – Ethics and standards of conduct.

(a) *Statement of policy.* Public employment is a public trust. It is the policy of the County to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the County. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the County and the manner in which goods and services are procured. To achieve the purpose of this section, it is essential that those doing business with the County also observe the ethical standards prescribed herein.

(b) *General standards of ethical conduct.*

(1) *General Ethical Standards for Employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employees' duties is a breach of a public trust.

(2) *General Ethical Standards for Non-Employees.* Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section is also a breach of ethical standards.

(c) *Employee conflict of interest.* It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

(1) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;

(2) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or

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

(d) *Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver.* Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved.

(e) *Employee Disclosure Requirements*

(1) *Disclosure of Benefit Received from Contract.* Any employee who has, or obtains any benefit from, any County contract with a business in which the employee has a financial interest shall report such benefit to the Purchasing Director; provided, however, this Section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.

(2) *Failure to Disclose Benefit Received.* Any employee who knows or should have known of such benefit, and fails to report such benefit to the Purchasing Director, is in breach of the ethical standards of this Section.

(f) *Gratuities and Kickbacks.*

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

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

Sec. 2-123. – Protests.

(a) *Bid/Proposal protests.* Any actual or prospective bidder, offeror, who is allegedly aggrieved in connection with the issuance of an Invitation for Bid, Request for Proposal, Request for Quotation, Request for Statement of Qualification, any other formal competitive selection process (collectively referred to as a solicitation) or pending award of a contract may protest to the Purchasing Director.

(b) *Posting.* The Purchasing Department shall publicly post on its departmental website, recommendations for awards involving solicitations no less than five (5) full business days after the award recommendation is posted.

(c) *Protest Requirements:*

(1) If the protest relates to the content of a solicitation, a written protest must be filed no later than 5:00 p.m. on the fifth (5th) full business day after issuance of the solicitation.

(2) If the protest relates to the award of a solicitation, a written protest must be filed no later than 5:00 p.m., on the fifth (5th) business day after posting of the award recommendation. The formal written protest shall identify (1) the protesting party, (2) the solicitation number involved, (3) a clear statement of the grounds on which the protest is based (4) all applicable references to the statutes, laws, ordinances or other legal authorities of which the protesting party is basing the protest; and (5) specific relief to which the protesting party deems itself entitled by application of such authorities to such grounds.

(3) A formal written protest is considered filed with the County when the Purchasing Department receives it. Accordingly, a protest is not timely filed unless it is received within the time specified above. Failure to file a written protest within the time period specified shall constitute a waiver of the right to protest and result in relinquishment of all rights to protest by the bidder/offeror.

(d) *Sole remedy.* These procedures shall be the sole administrative remedy for challenging a solicitation document or solicitation award. Bidders/offerors are prohibited from attempts to influence, persuade, or promote a bid protest through any other channels or means. Attempts to circumvent these procedures shall result in the immediate rejection of the protest and may lead to the protestor's debarment for a period of no more than three (3) years.

(e) *Authority to resolve.* The Purchasing Director shall resolve the protest in a fair and equitable manner and shall render a written decision to the protesting party no later than 5:00 p.m. on the fifth (5th) full business day after the filing thereof.

(f) *Review of Purchasing Director's decision.*

(1) The protesting party may request a review of the Purchasing Director's decision by the County Administrator by delivering a written request to the County Administrator for a review of

the Purchasing Director's decision by 5:00 p.m. on the fifth (5th) full business day after the date of the Purchasing Director's written decision. The written request for review shall include pertinent written or physical materials, objects, statements, and arguments, which the bidder/proposer deems relevant to the issues raised in the review request.

(2) If the County Administrator determines that the solicitation or award is in violation of applicable law, policies or procedures, the County Administrator shall cancel, cause the solicitation to be revised, or award in a manner deemed to be lawful, in the County's best interest, and permitted by this division, no later than 5:00 p.m. on the fifth (5th) full business day after receipt of the written review request. The County Administrator shall notify the protesting party in writing of the decision no later than 5:00 p.m. on the fifth (5th) full business day after receipt of the written review request.

(3) If it is determined that the solicitation or award should be upheld, the County Administrator shall render a written decision to the protesting party no later than 5:00 p.m. on the fifth (5th) full business day after receipt of the written review request.

(4) The protesting party may request a review of the County Administrator's decision by the Board of County Commissioners by delivering a written request to the Chairman of the Board of County Commissioners for a review of the County Administrator's decision by 5:00 p.m. on the fifth (5th) full business day after the date of the County Administrator's written decision. Copies of the request for review shall also be delivered to the County Administrator and Purchasing Director at the same time. The written request for review shall include pertinent written or physical materials, objects, statements, and arguments, which the bidder/proposer deems relevant to the issues raised in the review request. The Board of County Commissioner's decision shall be final and conclusive. Written communication provided to the Board of County Commissioners under this section shall not be considered a violation of the lobbying prohibition provided in Section 2-123.

(g) *Stay of Procurement During Protests.* Nothing in this section shall require the County to stay an award during the protest process.

(h) *Emergency or Urgent Purchases.* The posting requirement in this section shall not apply to emergency or urgent purchases where the posting requirement cannot be met without adversely impacting the public's health, welfare, safety, public property and/or critical systems.

(i) *Time Definition.* All times specified in this section shall be local (Eastern Time Zone) and governed by the clocks in the respective county offices.

Sec. 2-124. – Authority to debar.

The Purchasing Director shall be authorized to debar a person or entity for cause from consideration for award of contracts. The debarment shall be for a period of not more than five (5) years from the date of the Purchasing Director's discovery of the most recent incident giving rise to the debarment. Debarment may be as to all contracting opportunities, or may be only as to certain types or sizes of projects or contracts, or it may be directed only to one or more distinct operating divisions or units of the suspended or debarred person or entity depending on the cause(s) and severity of the reason(s) for debarment at the sole discretion of the Purchasing Director so as to protect the County and maintain the integrity of the procurement process. The causes for debarment shall include:

- (a) Conviction for 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, or a civil or criminal final judgment of violation of state or federal whistleblower laws;
- (b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which would currently, seriously, directly and reasonably affect responsibility as a contractor for the County;
- (c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (d) Misrepresentation in a submittal or response, violation of contract provisions, or any other cause which is regarded by the Purchasing Director to be so serious and compelling as to affect responsibility of the contractor, which reasonably justifies debarment action; including, but not limited to debarment by another government entity for any cause listed in this division or applicable law;
- (e) Deliberate failure, without good cause, to perform in accordance with the specifications, budget, offered prices or within the time limit provided in the contract; or
- (f) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (g) A documented history of significant deviation from contract specifications, engineering standards, design or material requirements or safety regulations, where such history has been reasonably communicated to the contractor by the County; and the contractor thereafter continues to engage in such deviations;

Sec. 2-125. – Debarment and reinstatement.

- (a) *Notice.* The Purchasing Director shall issue a written decision to debar. The decision shall state the reasons for the action taken, the period the debarment shall be in effect, and inform the debarred person or entity of any right it may have to administrative review of the decision.
- (b) *Reinstatement.* After debarment, a person may not contract with the County until reinstated by the Purchasing Director. The person or entity must supply information and reasonable documentation indicating that the conditions causing the debarment have been rectified. As a condition of reinstatement, the Purchasing Director may limit the nature and scope of contractual undertakings that must be satisfactorily completed before seeking additional contracts from the County. The Purchasing Director's reinstatement determination shall be in writing and shall inform the debarred person or entity of the right to seek judicial or administrative review. Nothing herein prevents the Purchasing Director from granting reinstatement prior to the initial debarment period where, in the Purchasing Director's judgment, the County's interests have been addressed and the person or entity to be reinstated is not likely to engage in similar conduct again. A copy of any debarment decision or any

reinstatement decision shall be sent via certified mail to the debarred or reinstated person or entity.

(c) *Finality of decision.* A decision to debar shall be final and conclusive unless the debarred person or entity appeals to the County Administrator, in writing, no later than 5:00 p.m., on the fifth (5th) business day after receiving the Purchasing Director's decision to debar.

(1) An appeal is considered filed when the County Administrator's Office receives it. Accordingly, a protest is not timely filed unless it is received within the time specified above. Failure to file a written appeal within the time period specified shall constitute a waiver of the right to appeal and result in relinquishment of all rights to appeal by the person or entity.

(2) If the County Administrator determines that the Purchasing Director's decision to debar is in violation of applicable law, policies or procedures, the County Administrator shall overturn the Purchasing Director's decision to debar, reinstate the person or entity and cause the Purchasing Director to notify the same in writing no later than 5:00 p.m. on the fifth (5th) full business day after receipt of the written appeal. If the County Administrator concurs with the Purchasing Director's decision to debar, the County Administrator shall cause the Purchasing Director to notify the debarred person or entity of the affirmation in writing.

Sec. 2-126. - Ineligibility for award of contracts and period of ineligibility.

(a) Any business entity controlled by or affiliated with any person or business entity ineligible for the award of a contract under Section 2-125 or Section 2-128 may also be prohibited from contracting with the County if the relationship or affiliation is such that, in the reasonable opinion of the Purchasing Director, the person or business entity, by reason of the relationship with the ineligible person or entity, is likely not to conduct business in a responsible or lawful manner, or if the ineligible person or business entity could directly benefit from the contract. Such factors as ownership interest, one or more members of the board of officials in common, control of one entity by the other, interlocking or shared management or principals, and limited management and ownership among family members, shall be considered in determining ineligibility under this section.

(b) A person, business entity, or officer or employee of a business entity, having been convicted of one or more of the crimes set forth in Section 2-128 or having made an admission of guilt as set forth in Section 2-128, shall be ineligible for the awarding of a contract by the County for a period of five (5) years following such conviction or admission.

(c) A person, business entity, or officer or employee of a business entity on the convicted vendor list as provided in §287.133, Fla. Sta. (as may be amended).

Sec. 2-127. - Prohibition against award of County contracts to certain persons and entities.

No person or business entity shall be awarded a contract by the County, for the provision of goods or services, if that person or business entity:

(a) Has been convicted of bribery or attempting to bribe a public officer or employee of the County, the State of Florida, or any other public entity, including but not limited to the Government of the United States, any state, or any local government authority in the United States, in that officer's or employee's official capacity; or

(b) Has been convicted of a conspiracy or collusion among prospective offerors in restraint of freedom of competition, by agreement to offer a fixed price, or otherwise; or

(c) Has been convicted of a violation of an environmental law that, in the reasonable opinion of the Purchasing Director, establishes reasonable grounds to believe the person or business entity will not conduct business in a responsible manner; or

(d) Has made an admission of guilt of such conduct described in subsections (a), (b) or (c) above, which is a matter of record, but has not been prosecuted for such conduct, or has made an admission of guilt of such conduct, which is a matter of record, pursuant to formal prosecution.

Sec. 2-128. - Business entities chargeable for the acts of officers, officials, agents, employees and affiliates.

Any business entity controlled by or affiliated with any person or business entity ineligible for the award of a contract under Sections 2-127 and 2-128 may also be prohibited from contracting with the County if the relationship or affiliation is such that, in the reasonable opinion of the Purchasing Director, the person or business entity, by reason of the relationship with the ineligible person or entity, is likely not to conduct business in a responsible or lawful manner, or if the ineligible person or business entity could directly benefit from the contract. Such factors as ownership interest, one or more members of the boards of officials in common, control of one entity by the other, interlocking or shared management or principals, and limited management and ownership among family members, will be considered in determining ineligibility under this section. Any person or business entity that is denied a contract under this section may proceed as though debarred under Section 2-127.

Sec. 2-129. - Proof of reversal of convictions and necessity for affidavits.

(a) Any person or entity who claims that this ordinance is inapplicable to him/her/it because a conviction or judgment has been reversed by a court of competent jurisdiction shall prove the same with documentation satisfactory to the Purchasing Director. Upon presentation of such satisfactory proof, the person or entity shall be allowed to contract with the County.

(b) The County shall not execute a contract with or purchase goods or services from any person or business entity until such person or business entity has executed and filed with the Purchasing Director an affidavit, executed under the pain and penalties of perjury, that conforms to policies adopted by the board, designed to provide reasonable assurance that neither the entity nor any person affiliated with the entity has been convicted of any violation described in Section 2-129, or has not made an admission of guilt as described in Section 2-129. In the case of a business entity other than a partnership or a corporation, such affidavit shall be executed by an authorized agent of the entity. In the case of a partnership, such affidavit shall be executed by the general partner(s). In the case of a corporation, such affidavit shall be executed by the corporate president.

Sec. 2-130. - Donation of goods and/or services.

Except as prohibited or prescribed by law, all donations (full or partial) of goods and/or services including, but not limited to professional architectural and engineering services, regardless of the source and dollar amount, shall require prior approval and acceptance by the Board of County Commissioners.

Sec. 2-131. - Exclusions from this ordinance.

(a) *Grants and gifts.* This division shall not apply to purchases made with the proceeds from any grant, gift, bequest, or donation to the extent the application of this division would conflict with the requirements, conditions, or limitations attached to the grant, gift, bequest, or donation.

(b) *Lease or purchase by the County of real property.* This division shall not apply to the acquisition of real property by lease, purchase or license for the County unless otherwise determined or directed by the Board of County Commissioners.

(c) *Where specified by general law, ordinance or policies.* This division shall not apply to any purchase governed by explicit provisions of general law or other County ordinance or Board of County Commissioners' policies unless the solicitation indicates the applicability of this division, and this division shall apply only to the extent set out in the solicitation.

(d) *Authority.* Nothing herein shall limit the authority of the Board of County Commissioners to modify or adopt policies governing any and all exclusions from this division.

Secs. 2-132– 2-135. Reserved.

Secs. 2-190 – 2-195. Reserved.

SECTION 3. REPEALER.

All ordinances and resolutions or parts thereof of the County in conflict with the provisions herein contained are hereby superseded and repealed, only to the extent of such conflict.

SECTION 4. SEVERABILITY.

It is declared to be the intent of the Board of County Commissioners of Pasco County, Florida that if any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5. INCLUSION IN THE CODE.

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pasco County Code of Ordinances; and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may

be changed to "division", "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

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SECTION 6. EFFECTIVE DATE.

A certified copy of this Ordinance shall be filed with the Department of State by the Clerk to the Board within ten (10) days after adoption of this Ordinance, and this Ordinance shall take effect upon filing with the Department of State.

ADOPTED with a quorum present and voting this 15th day of DECEMBER, 2015.



BY: Paula S. O'Neil
PAULA S. O'NEIL, PH.D.
CLERK & COMPTROLLER

BOARD OF COUNTY COMMISSIONERS
OF PASCO COUNTY, FLORIDA

BY: Kathryn Starkey
KATHRYN STARKEY
CHAIRMAN

APPROVED
IN SESSION
DEC 15 2015
PASCO COUNTY
BCC