

SARASOTA COUNTY

PROCUREMENT CODE

ORDINANCE NO. 2003-084

AN ORDINANCE OF THE COUNTY OF SARASOTA, FLORIDA, TO RECIND THE PRUCHASING ORDINANCE 84-069 AS AMENDED BY ORDINANCES 95-040, 96-026, 97-030, AND 98-067, AND ORDINANCE 90-10; PROVIDING FOR A PURPOSE, APPLICABILITY, AUTHORITY, AND DELEGATION OF AUTHORITY, CENTRAL PROCUREMENT SYSTEM, EXEMPTIONS FROM COMPETITION, EMERGENCY PROCUREMENT, QUALIFICATIONS, COMPETITIVE SEALED BIDS, COMPETITIVE SEALED PROPOSALS, PROCUREMENTS OF PROFESSIONAL SERVICES, SMALL PROCUREMENTS, PROTESTS, INSURANCE AND BONDING, AUDIT RIGHTS, RESERVED RIGHTS, UNAUTHORIZED PURCHASES, COMPLIANCE WITH STATE REQUIREMENTS, COMPLIANCE WITH FEDERAL REQUIREMENTS, ENVIRONMENTALLY PREFERRED PROCUREMENT, EFFECTIVE DATE, EFFECT ON OTHER ORDINANCES, AND PROVISIONS HELD UNCONSTITUTIONAL.

Section 1. This Ordinance shall repeal and replace Article VI of Chapter 2 of the Sarasota County Code (the "Code") and create a new Article VI of Chapter 2 of the Code which shall be known and may be cited as the "Sarasota County Procurement Code".

Section 2. Section 2-211 of the Code is hereby created to read as follows:

Section 2-211. Purpose

The purpose and intent of this Ordinance is to set forth in a clear manner the fundamental law governing the Sarasota County Procurement system; to provide for the fair and equitable treatment of all persons involved with public purchasing by this County; to maximize the purchasing value of public funds in procurement; to provide safeguards for maintaining a procurement system of quality and integrity, and to foster effective competition for all procurements.

Section 3. Section 2-212 of the Code is hereby created to read as follows:

Section 2-212. Applicability

- (a) This Ordinance shall apply to every procurement of the Board of County Commissioners or any governmental body under the control or supervision of said Board acting in any capacity except as otherwise stated herein.
- (b) In the application of this Ordinance to procurements by the Clerk of the Circuit Court, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector of Sarasota

County, any function, power, duty, right or authority assigned by the terms of this Ordinance to the Board of County Commissioners, County Administrator, Procurement Official, or any other County employee or official may be performed by the said Constitutional officer or designee. Sarasota County, its officers and agencies, are hereby authorized to furnish procurement services and facilities to any of the said Constitutional officers upon request, subject to the provisions of this Ordinance.

- (c) The Board of County Commissioners may, when deemed to be in the best interest of the County, waive any and all requirements set forth in this Ordinance and proceed thereafter to take whatever action is deemed to be in the best interest of the County. Nothing in this Ordinance shall limit the Board of County Commissioners' right to waive any provisions contained herein.

Section 4. Section 2-213 of the Code is hereby created to read as follows:

Section 2-213 Authority

In accordance with Chapter 125, Florida Statutes, the Board of County Commissioners hereby establishes a system for the procurement for goods and services for Sarasota County. All procurements shall be processed through the central procurement system, under the direction of the County Procurement Official who is designated by the County Administrator. For purposes of this Ordinance, the "Procurement Official" shall mean the individual so identified in the County's Procurement Manual (the "Manual"). Nothing contained herein shall limit the ability of the County Administrator, or his designee, to perform any function delegated to the Procurement Official.

Section 5. Section 2-214 of the Code is hereby created to read as follows:

Section 2-214 Delegation of Authority

- (a) Except as otherwise provided for by law, the Board of County Commissioners authorizes the County Administrator, or his designee, to approve and execute procurement contracts for projects that are duly included in and consistent with the adopted Capital Improvement Program (CIP) budget. The County Administrator shall inform the Board of County Commissioners on a regular basis with a summary report of recently executed contracts.
- (b) Except as otherwise provided for by law, the Board of County Commissioners authorizes the County Administrator, or his designee, to approve and execute procurement contracts that are included in and consistent with the adopted operating budget and do not exceed an estimated total cost of \$100,000.
- (c) The Board of County Commissioners will approve Continuing Professional Services Contracts and authorizes the County Administrator, or his designee, to approve and execute Work Assignments for these contracts not to exceed \$50,000 or 10% of the contract value whichever is greater.

- (d) Nothing contained herein shall be construed to limit the ability of the Board of County Commissioners to make additional delegations of authority in conjunction within the budget adoption process.

Section 6. Section 2-215 of the Code is hereby created to read as follows:

Section 2-215 Central Procurement System

- (a) The County shall maintain a central procurement system, which shall provide for the purchase, lease or other acquisition method of all goods or services for County purposes in accordance with the law, rules and regulations of Sarasota County. The system shall be made available to the Clerk of the Circuit Court, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector of Sarasota County, upon request.
- (b) Procurement of goods and services in excess of the threshold level(s) for sealed competition, as set forth in the Manual, shall be made through competitive sealed bids or competitive sealed proposals.

Section 7. Section 2-216 of the Code is hereby created to read as follows:

Section 2-216 Exemptions From Competition

The following procurements shall not be subject to competitive requirements in the judgment of the Procurement Official:

- (a) A contract may be awarded for goods or services without competition when the Procurement Official determines in writing that there is only one source for the required item.
- (b) The procurement of goods and services from State of Florida purchasing agreements, purchasing co-operative agreements, National Association of County (NACo) agreements, federal GSA agreements, other government agencies, recent Sarasota County Agreements, other public entities, inter-local agreements, or other organizations comprised of government entities or officers that have been through a competitive selection process.
- (c) Procurements made from non-profit organizations.
- (d) The procurement of dues and memberships in trade or professional organizations, subscriptions for periodicals, books, electronic information, media, maps, pamphlets and similar material in printed or electronic form; real property and related services; works of art for public display, advertising, medical, dental, psychological, pharmaceutical, nursing, and other medically related professional services; room or

board for social service clients; funeral related services; water, sewer, electrical, cable television, or other utility services; personnel, including, but not limited to, part-time, temporary and contract services; and business travel services.

- (e) Contracts for goods and services to be provided directly to the citizenry by the contractor.
- (f) The procurement of goods and services as part of the process of apprehending persons suspected of violating the law.
- (g) Direct purchase orders issued for sales tax savings.
- (h) The procurement of instructors, trainers, facilitators, counselors, perishable food, used equipment, artistic services, educational field trips, recreational field trips, and legal services.
- (i) Goods or services given to the County via grant, gift or bequest.
- (j) Security services provided by off-duty law enforcement personnel.
- (k) Products or services related to information technology.

Section 8. Section 2-217 of the Code is hereby created to read as follows:

Section 2-217 Emergency Procurements

- (a) When the Board of County Commissioners finds it to be in the best interest of Sarasota County, it may declare the existence of an emergency procurement condition and may suspend any or all of the provisions of this Ordinance and authorize an emergency procurement.
- (b) Emergency procurements shall be made with such competition as is practical under the circumstances. When an emergency procurement is authorized, the factual basis for the emergency and for the selection of the particular contractor shall be documented.
- (c) The County Administrator or his designee, may respond to an emergency procurement without prior approval of the Board of County Commissioners.
- (d) As soon as practical, emergency procurements made by the County Administrator shall be reported to the Board of County Commissioners.
- (e) An emergency procurement condition is any circumstance posing clear and immediate danger of injury to persons or property or of substantial economic loss to Sarasota County.

- (f) Procedures for handling emergencies may be included in the Procurement Manual.

Section 9. Section 2-218 of the Code is hereby created to read as follows:

Section 2-218 Qualification

The Board authorizes the County Administrator, or his designee, to implement a qualification process for those procurements in which it is in the County's best interest to limit participation in the solicitation process to those bidders, proposers or offerors who demonstrate a capability to provide the goods or services required by the County.

Section 10. Section 2-219 of the Code is hereby created to read as follows:

Section 2-219 Competitive Sealed Bids

- (a) All procurements requiring the receipt of competitive bids under this Ordinance shall be upon Invitation for Bids. An invitation to bid shall be made available simultaneously to all vendors and must include procurement specifications, bid award criteria, and all principal terms and conditions applicable to the procurement. Awards shall be made based upon objectively measurable criteria, such as prices, discounts, transportation costs, and total or life cycle costs. No criteria may be used that are not set forth in the Invitation for Bids.
- (b) Bids must be received no later than the published time of bid opening to be considered for award. Bids shall be opened publicly at the time and place designated in the Invitation for Bids. The amount of each bid, together with the name of each bidder, and the record of each bid shall be open to public inspection.
- (c) Information in a bid which concerns the responsibility of the bidder shall not necessarily be considered conclusive at the time of bid opening, except when the Invitation for Bids unequivocally states that the bid shall not be considered responsive unless the particular information is provided in the bid.
- (d) The Procurement Official may determine that a bid is not responsive or the bidder is not responsible and reject the bid in whole or in part.
- (e) The Procurement Official may, after bid opening, request additional information or clarification by the bidder
- (f) The Procurement Official may waive or accept minor irregularities in a bid when, in the sole opinion of the Procurement Official, such waiver or acceptance is deemed to be in the best interest of the County.

- (g) To maintain the integrity of the competitive sealed bid process, to assure fairness, the following shall govern the correction of information submitted in a bid.
- 1 Bidders may correct errors in extension of unit prices in the bids, or in multiplication, division, addition or subtraction. In such cases the unit prices bid shall not be changed.
 - 2 Bidders may be permitted to correct clerical or scrivener's errors in a bid, where an examination of the entire bid submitted, shows the error to be consistent with the bid price.
- (h) A bidder shall be permitted to withdraw a bid when the Procurement Official determines that the withdrawal is in the best interest of the County. If a bidder unilaterally withdraws his bid without permission, that bidder may be prohibited from doing business with the County for a period of one year, in addition, the County may make a claim on such bidder's bid bond or other financial security according to the terms of the Invitation For Bid.
- (i) The Procurement Official reserves the right to cancel any Invitation For Bid during any phase of the solicitation process. The Purchasing Official further reserves the right to cancel any recommended award or recommended contract at any time prior to execution. Such determination may be based upon bid mistakes, or other reasonable factors determined to be in the best interest of the County.
- (j) For each Invitation For Bid the lowest responsive and responsible bidder shall be notified by written notice within a reasonable period after the Procurement Official has made such determination. As used in this Ordinance, the term "responsive and responsible bidder" means a bidder whose bid conforms in all material respects to the Invitation For Bid, and who has the capability in all respects to perform the contract requirements.
- (k) Whenever two or more bids for goods or services are determined by the County to be equal with respect to price, quality and service, the bid received from a business that certifies it has implemented a drug-free workplace program, pursuant to Section 287.087 Florida Statute, shall be given preference in the award process. If neither or all of the tied bidders have certified that they are drug-free workplaces, award shall be made to the bidder doing business from a location within Sarasota County. If a tie continues to exist, the award shall be made, based on random selection by the Procurement Official before at least three (3) witnesses.
- (l) After bid opening and determination of the lowest responsive and responsible bidder, the Procurement Official will issue a Notice of Award Action, which gives notice to all bidders of the County's intended award action.

Section 11. Section 2-220 of the Code is hereby created to read as follows:

Section 2-220 Competitive Sealed Proposals.

- (a) When the Procurement Official determines that the use of a competitive sealed bid is not advantageous to the County, a competitive sealed proposal may be used.
- (b) Competitive sealed proposals shall be solicited through a Request for Proposals and be made available simultaneously to all vendors.
- (c) The Request for Proposals shall state the relative importance of the evaluation criteria.
- (d) The Procurement Official may authorize discussions with responsible offerors for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- (e) Awards shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the County taking into consideration all the evaluation criteria set forth in the Request for Proposals.
- (f) The Procurement Official reserves the right to cancel any Request For Proposal during any phase of the solicitation process. The Procurement Official further reserves the right to cancel any recommended award or recommended contract at any time prior to execution. Such determination may be based upon proposal mistakes, or other reasonable factors determined to be in the best interest of the County.
- (g) The Procurement Official will issue a Notice of Award Action, which gives notice to all proposers of the County's intended award action.

Section 12. Section 2-221 of the Code is hereby created to read as follows:

Section 2-221 Procurement of Professional Services

- (a) Sarasota County shall procure professional engineering, architectural, landscape architectural or registered surveying and mapping services in accordance with Section 287.055, Florida Statutes.

- (b) Professional Services estimated in an amount over the threshold of Category Two, Section 287.017, Florida Statutes, shall be solicited through a Call for Professional Services and be made available simultaneously to all vendors.
- (c) The Call for Professional Services shall include at a minimum the technical requirements of the services required and any specific terms and conditions that are necessary for the particular service desired by the County.
- (d) The proposals submitted shall be evaluated and ranked through a qualifications based selection incorporating the specific evaluation criteria stated in Section 287.055, Florida Statutes, by a Professional Services Review Committee (PSRC). The PSRC may establish other factors as appropriate for each specific selection.
- (e) Negotiations shall take place with the first ranked respondent as soon as practical after the Notice of Award is posted announcing the recommended top three ranked firms. If negotiations with the first ranked respondent are unsuccessful, negotiations will begin with the next ranked respondent as set forth in Section 287.055, Florida Statutes. The ranking and the negotiated agreement shall be presented to the Board of County Commissioners for approval.
- (f) The Procurement Official will issue a Notice of Award Action, which gives notice to all respondents of the County's intended award action.

Section 13. Section 2-222 of the Code is hereby created to read as follows:

Section 2-223 Small Procurements

Any procurement not exceeding the threshold level(s) for sealed competition, as set forth in the Manual, may be made. Such procurement shall utilize informal competitive procurement procedures, such as a competitive oral or written request for quotations for goods and/or services. Awards shall be made to the offeror providing the best value, all factors considered, to the County. Requirements shall not be artificially divided so as to constitute a small procurement under this section.

Section 14. Section 2-223 of the Code is hereby created to read as follows:

Section 2-223 Protests

- (a) Any bidder, proposer or offeror who believes that they have been aggrieved in connection with the solicitation or award of a contract, as the result of a violation of the requirements of this Code or any applicable provision of law, may protest the solicitation or the award action.
- (b) With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking or

evaluating bids, proposals, or replies, awarding contracts, reserving the rights of further negotiation, or modifying or amending any bid, proposal, reply, or contract, the notice of protest shall be filed within three (3) working days after the posting of the solicitation.

- (c) Upon completion of the evaluation of any competitive sealed bid or proposal for a particular procurement, the Procurement Official shall publish a Notice of Award Action, as applicable. The Notice shall be posted in the offices of the Procurement Official. The Notice shall be mailed, sent via facsimile, or transmitted electronically to all affected bidders or proposers.
- (d) Protestors shall first verbally notify the Procurement Official, of their intent to protest within three (3) working days of the posting of the Notice of Award Action, as applicable.
- (e) A formal written protest shall be filed with the Procurement Official within seven (7) calendar days of the posting of the Notice of Award Action.
- (f) The formal, written protest shall include at a minimum the following elements:
 - 1. Bid or RFP Number and title,
 - 2. The name and address of the protestor,
 - 3. The identification of the provision of the Sarasota County Procurement Code or other applicable provisions of law and a brief description of the actions or activities of the Procurement Official or others that appear to be in violation of those applicable provisions of the Code or applicable laws,
 - 4. Supporting exhibits, evidence, or documents to substantiate any claims,
 - 5. A statement indicating the relief the protestor seeks, and
 - 6. Any other information that the protestor deems to be material to the protest.
- (g) Upon receipt of a formal written protest which has been timely filed, the Procurement Official shall stop the solicitation process or the contract award process until the subject protest is resolved, unless it is determined that particular facts and circumstances require the continuance of the solicitation process or the contract award process without delay to avoid an immediate and serious danger to the public health, safety or welfare of the County.
- (h) The Procurement Official shall furnish a decision in writing within seven (7) calendar days of receipt of the formal written protest.
- (i) The protestor may appeal the decision of the Procurement Official to the County Administrator. The formal written appeal shall be made within five (5) calendar days of receipt of the decision of the Procurement Official and shall include the items listed in Section 13.5 of this Code and the basis for the protestor's disagreement with the decision of the Purchasing Official.

- (j) The decision of the County Administrator or his designee shall be furnished to the protestor within ten (10) calendar days of receipt of the appeal.
- (k) The protestor may appeal the decision of the County Administrator to the Board of County Commissioners. The formal written appeal shall be made within seven (7) calendar days of receipt of the decision of the County Administrator or his designee and shall include the items listed in Section 13.5 of this Code and the basis for the protestor's disagreement with the decision of the County Administrator. The decision of the Board of County Commissioners shall be final.
- (l) Failure of a protestor to file a protest within the times required at any step of this procedure or failure to include the required information in the protest shall invalidate the protest.

Section 15. Section 2-224 of the Code is hereby created to read as follows:

Section 2-224 Insurance and Bonding

- (a) In all procurements in which there is a requirement for an insurance and/or surety bond, the vendor shall provide such insurance requirements and bond requirements in the form and in the amount acceptable to the County, prior to the commencement of work.
- (b) Bonding requirements are determined by the Procurement Official to protect the County and may include performance bonds, payment bonds, bid bonds, protest bonds, or any other type of financial guarantee deemed necessary.

Section 16. Section 2-225 of the Code is hereby created to read as follows:

Section 2-225 Audit Rights

The County shall be entitled to audit and otherwise inspect and copy the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that such books and records relate to the performance of such contract or subcontract. The contractor shall maintain such books and records for a period of three (3) years from the date of final payment under the contract, unless the Procurement Official authorizes a shorter period.

Section 17. Section 2-226 of the Code is hereby created to read as follows:

Section 2-226 Reserved Rights

The County reserves the right in any solicitation to accept or reject any or all bids, to waive minor irregularities and technicalities, and to request resubmission. Also, the County reserves the right to accept all or any part of the bid and to increase or decrease quantities to

meet additional or reduced requirements of the County. Any sole response received by the first submission date may or may not be rejected by the County depending on available competition and current needs of the County.

Section 18. Section 2-227 of the Code is hereby created to read as follows:

Section 2-227 Unauthorized Purchases

- (a) The Procurement system shall not be utilized by Sarasota County employees to purchase goods or services for personal use.
- (b) Except as otherwise provided herein, it shall be a violation of this Ordinance for any County officer, employee or other person to order the purchase of any materials or supplies, or make any contract for materials, supplies or services within the purview of this Ordinance in the name of or on behalf of Sarasota County, other than through the centralized procurement system.
- (c) The County shall not be bound by any purchase order or contract made contrary to the provisions herein.
- (d) Consistent with County personnel policies and procedures, the County Administrator may impose any one or more of the following sanctions on an employee for violation of this Section of the Ordinance:
 - 1. Written reprimand;
 - 2. Suspension without pay for a specified period of time, and
 - 3. Termination of employment.

Section 19. Section 2-228 of the Code is hereby created to read as follows:

Section 2-228 Compliance with State Requirements

When procurement involves the expenditure of state funds, the County shall comply with all applicable state laws and regulations, the provisions of this Ordinance notwithstanding.

Section 20. Section 2-229 of the Code is hereby created to read as follows:

Section 2-229 Compliance with Federal Requirements

When a procurement involves the expenditure of federal funds, the County shall comply with all applicable federal laws and regulations, the provisions of this Ordinance notwithstanding.

Section 21. Section 2-230 of the Code is hereby created to read as follows:

Section 2-230 Environmentally Preferred Procurement (EPP)

The County is committed to the procurement of products and services that minimize negative environmental and social impacts and emphasize long-term values. Preference shall be given to products and services that have a lesser or reduced effect on human health and the environment when compared to other products and services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Section 22. Section 2-231 of the Code is hereby created to read as follows:

Section 2-231 Effect on Other Ordinances

The provisions of this Ordinance shall supersede any provisions of existing Ordinances in conflict herewith. Sarasota County Ordinances 84-069, 90-10, 95-040, 97-030, 98-067, are hereby repealed.

Section 23. Section 2-232 of the Code is hereby created to read as follows:

Section 2-232 Provisions held Unconstitutional

If any provision of this Ordinance is for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such provisions shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions.

Section 23. Section 2-233 of the Code is hereby created to read as follows:

Section 2-233 Effective Date

This Ordinance shall take effect immediately upon receipt of the official acknowledgment from the office of the Secretary of the State of Florida that this Ordinance has been filed with said office.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA, this _____ day of _____, 2003

BOARD OF COUNTY COMMISSIONERS OF
SARASOTA COUNTY, FLORIDA

BY: _____

ATTEST:

KAREN E. RUSHING, Clerk of the
Circuit Court and Ex-Officio Clerk
Of the Board of County Commissioners
Of Sarasota County, Florida

BY: _____
Deputy Clerk