

ARTICLE VIII. PROCUREMENT¹

Sec. 2-315. Title.

The provisions of this article shall be known as the Town of Davie Procurement Code.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-316. Purpose and intent.

- (a) *General.* This article applies to all purchases of materials, supplies, services, equipment, construction and certain contractual services by the town except as provided herein. In the event of a conflict between the provisions of this article and any applicable state or federal law, the latter shall prevail.
- (b) *Purpose and intent.* The purpose and intent of this article shall be to generally prescribe the manner in which the town shall control the purchase of materials, supplies, services, equipment, construction and certain contractual services. This article shall be construed and applied to promote its underlying purposes. The underlying purposes are:
 - (1) To obtain the materials, supplies, services, equipment, construction and certain contractual services required by town departments in a cost effective and responsive manner in order for those departments to better serve the town;
 - (2) To uphold the highest standards and best practices through adoption and adherence with public procurement profession values and guiding principles of accountability, ethics, impartiality, professionalism, service and transparency;
 - (3) To provide fair and equitable treatment of all who transact business with the town;
 - (4) To maximize the purchasing value of public funds in the procurement of goods and services;
 - (5) To provide safeguards for the quality and integrity of the town's procurement process;
 - (6) To maintain a high ethical standard for all officers and employees of the town in connection with the procurement process; and
 - (7) To require all parties involved in negotiation, performance, and/or administration of town contracts to act in good faith.
- (c) *Contracts to which this article is applicable.* This article applies only to contracts solicited or entered into after the effective date of this article. Nothing in this article shall be construed to prohibit the town from complying with the terms of a grant, gift, or cooperative agreement.

¹Editor's note(s)—Ord. No. O2021-020 , § 2(Exh. A), adopted Aug. 4, 2021, repealed the former Art. VIII, §§ 2-315—2-329, and enacted a new Art. VIII as set out herein. The former Art. VIII pertained to purchasing and derived from Ord. No. 88-70, § 1, adopted Nov. 2, 1988; Ord. No. 92-8, § 1, adopted Feb. 19, 1992; Ord. No. 96-3, § 1, adopted Feb. 7, 1996; Ord. No. 97-41, §§ 1, 2, adopted July 16, 1997; Ord. No. 2003-003, § 1, adopted Feb. 5, 2003; Ord. No. 2009-1, § 1, adopted Jan. 7, 2009; Ord. No. 2011-32, § 1, adopted Sept. 21, 2011; and Ord. No. 2015-003, § 1, adopted Feb. 4, 2015.

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- (d) *Supplementary general principles of law applicable.* Unless displaced by the particular provisions of this Code, the principles of law and equity, including the Uniform Commercial Code of the State of Florida shall supplement the provisions of this article.
 - (e) *Severability.* If any provision of this Code or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.
 - (f) *Determinations.* Written determinations required by this Code shall be retained in the appropriate official contract file of the procurement manager or the using department.
 - (g) *Public access to procurement information.* Procurement information shall be a public record to the extent permitted by Florida statute as amended from time to time and shall be available to the public as provided in such statute.
 - (h) *Authorization for the use of electronic transmissions.* The use of electronic media, including acceptance of electronic signatures, is authorized consistent with State of Florida applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:
 - (1) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
 - (2) Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-317. Definitions.

The words defined in this section shall have the meanings set forth below whenever they appear in this Code, unless: The context in which they are used clearly requires a different meaning; or a different definition is prescribed for a particular article or provision.

Addendum/addenda means a formal written notification to prospective bidders or proponents which provides clarification of the requirements for a solicitation. Addenda are also used to summarize clarifications made during a pre-bid or pre-solicitation conference. Whenever a potential bidder/proponent requests information or a clarification regarding information that is not clearly referenced in a solicitation document, it is necessary to provide all bidders and proponents with the information in writing, using the addendum document.

Administrative policy means a formal written policy or procedural guideline which governs the operational process for carrying out various fiduciary functions of government on a town-wide basis. Administrative policies are approved and issued by the town administrator, budget and finance director and/or human resources director.

Advertisement means a formal announcement of an invitation for a solicitation; usually placed in a newspaper of general circulation and/or on an Internet website.

Best and final offer (BAFO): In a competitive negotiation, the final proposal submitted after negotiations are completed that contains the proposer's most favorable terms for price, services and products to be delivered. Sometimes referred to as BAFO and utilized during the request for proposal method of procurement or when applying local preference under section 2-326.

Best value means the highest overall value to the town based on relevant factors that may include, but are not limited to, price, quality, design and workmanship.

Bid bond means a bid security in the form of a bid surety, certified check, cashier's check, or cash that ensures that the bidder will be capable of entering into a contract and subsequently provide the required performance and payment bonds within a specified period of time.

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

Business day means a day, Monday through Friday, excluding any day that is a town observed holiday.

Calendar day or "*day*" means a consecutive twenty-four-hour period running from 12:00:01 a.m. to midnight.

Category Two means the dollar threshold defined by F.S. § 287.017(2), as may be amended by the State of Florida from time to time; which shall serve as the formal solicitation threshold for purchases that exceed Category Two made on behalf of the Town of Davie. At the time of the adoption of this procurement code the statutory limit is \$35,000.

Category Three means the dollar threshold defined by F.S. § 287.017(3), as may be amended by the State of Florida from time to time; which shall serve as the formal solicitation threshold for purchases that exceed Category Three made on behalf of the Town of Davie. At the time of the adoption of this procurement code the statutory limit is \$65,000.

Change order means any written alteration or modification to a contract executed by the town in accordance with the terms of the contract, directing the contractor to make changes due to unanticipated conditions or developments, which do not substantially alter the character of the work contracted for, and which do not vary so substantially from the original specifications as to constitute a new undertaking.

Construction means the process of building, altering, repairing, improving, or demolishing any facility, including any improvements of any kind to real property, including roadways, utilities, infrastructure, and facility site work. Construction does not include the routine operation, routine repair, or routine maintenance of any existing infrastructure facility, including structures, buildings or real property.

Construction manager-at-risk means a construction delivery process allowing the project owner to choose a construction manager who assumes the risk for construction, rehabilitation, or repair of a public facility at the contracted price as a general contractor and provides consultation to the town regarding construction during and after the design.

Consultant's Competitive Negotiations Act (CCNA) means F.S. § 287.055, as amended, governing the procurement of architectural, engineering, land surveyor and mapping or landscape architect services.

Contingent or contingency contract means an agreement whereby the contractor's revenue is generated from a commission, percentage or other fee that is conditional upon the success that a person has in securing a contract or based on performance on a contract.

Continuing services agreement or contract means a contract for professional services entered into in accordance with F.S. § 287.055, as amended, whereby a firm provides professional services for projects in which construction costs, and costs for a study activity do not exceed the thresholds outlined in F.S. § 287.055, or for work of a specified nature as outlined in the contract required by the town, with no time limitation except the contract must provide for a termination clause.

Contract means all types of town agreements, regardless of what they may be called, for the procurement or disposal of materials, supplies, services, equipment, construction and certain contractual services between parties with binding legal and moral force, usually exchanging goods or services for money or other consideration.

Contract modification means written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor means any person or business having a contract with a governmental body or that contracts to perform work or services or provides goods or supplies to the town.

Contractual services means without limitation, the purchase of insurance, printing, gas, electricity, fuel, cleaning services; the purchase, installation, rental repair and maintenance of equipment and machinery, and other personal property; lease or real property and office space, and all other contractual supplies, materials and equipment and services not specifically excluded from the requirements of this article.

Data means recorded information, regardless of form or characteristic.

Debarment means the disqualification of a person or company to be awarded any contracts by the town for a specified period of time commensurate with the gravity of the offense or the failure or inadequacy of performance.

Department means all or any of the town's various departments or divisions.

Design-bid-build means a construction project delivery method in which the town 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 construction project delivery method in which the town enters into a single contract for design and construction of an infrastructure facility as defined in F.S. § 287.055, (CCNA) as amended.

Designee means a person who is chosen to represent or given the authority to act on behalf of another person of authority.

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

Employee means an individual drawing a salary from a governmental body, whether elected or not, or from a public or private company or partnership.

Excess supplies (also see surplus property) means any tangible personal property having a remaining useful life but which is no longer required by the town department in possession of the supplies.

Formal competitive process shall mean a bid or proposal which has been submitted in a sealed envelope or secured method to prevent its contents being revealed or known before the deadline for the submission of all bids to ensure fair competition.

Governmental body means any unit or association of units of federal, state or local government, any public authority which has the power to tax, any other public entity created by statute and any other entity which expends public funds for the procurement of materials, supplies, services, equipment, construction and certain contractual services.

Grant means a contribution, gift, or subsidy made for specific purposes, frequently made conditional upon specific performance by the grantee.

Gratuity means a gift, payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, presented or promised, unless consideration of substantially equal or greater value is received.

Informal competitive process shall mean a bid or proposal which has been submitted in non-sealed envelope or unsecured method to prevent its contents being revealed or known before the deadline for the submission of all bids to ensure fair competition.

Invitation for bid means a written solicitation for competitive sealed bids with the title, date and time of the public bid opening designated and specifically defining the commodity, group of commodities, or services for bids that are sought. Unless specifically authorized by this Code, no negotiation is permitted, and the contract award is granted to the lowest priced responsive and responsible bid, which conforms to the requirements set forth in the bid document.

Invitation to negotiate means a written solicitation for competitive sealed replies to one (1) or more vendors with which to negotiate for the procurement of commodities or services.

Job order contracting means a construction delivery method in which the town awards a term contract agreement that provides for unit pricing for individual tasks of a project to provide construction services based on individual quotations prepared on a project-by-project basis. Unit pricing is normally predicated on the compilation of a task guide reflecting local construction market conditions where contractors bid a general discount or add-on factor.

Performance bond means a contract of guarantee, executed prior or subsequent to award by a successful bidder, to protect the town from loss due to the bidder's inability to complete the contract as agreed. The bond ensures that the project will be able to be completed in the event that the bonded contractor defaults on their contract.

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

Piggybacking means the purchases of goods or services based upon contracts awarded by other governmental or not-for-profit entities by any formal competitive bid, selection process or negotiated process. The town shall adopt the contract as its own agreement and shall not be associated or connected in any manner with the initiating agency that originally solicited the contract. The town may negotiate the terms of the contract to ensure legal sufficiency and protect the town's best interests to the point in which it does not alter the originally intended products, pricing (unless further discounts are offered) or services. Once the other agency's active contract is used as the basis of a piggyback by the town, the piggyback shall not be impaired by the future decisions or actions of the other agency.

Procurement means buying, purchasing, renting, contracting, leasing, or otherwise acquiring any supplies, services or construction including, but not limited to, all functions that pertain to the obtaining of any materials, supplies, services, equipment, construction and certain contractual services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement officer means the procurement manager who serves as head of the procurement division, which is established as the Budget and Finance/Procurement Division of the Town of Davie.

Professional services means services within the scope of a particular area of practice; such as the practice of architecture, landscape architecture, land surveying and professional engineering which are governed by F.S. § 287.055, the Consultants' Competitive Negotiation Act, as amended. Auditing services, which are governed by F.S. § 218.391, and other professions including, but not limited to, law, management consulting, medicine, real estate appraising, or other area of expertise or for which specialized training is required.

Public notice means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, posting on a bulletin board, electronic or paper mailing lists, and web site(s) designated by the town and maintained for that purpose.

Purchase request means a document whereby a town department requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Code.

Request for proposal or RFP (or competitive sealed proposals) means a written solicitation for competitive sealed proposals with the title, date and hour of deadline for submittal. The request for proposals is used when it is impractical for the agency to define a detailed scope of work. The request for proposal document is used to solicit proposals from potential providers for goods and services (offerors). Requests for proposals are evaluated on various criteria, which may or may not include price. When used as an evaluation factor, price may not be the primary evaluation factor, but the proposal document shall state the evaluation criteria. A request for proposal provides for the negotiation of all terms, including price, prior to contract award; and may include a provision for

the negotiation of a BAFO. Requests for proposal may be a single step or a multi-step process with regard to contract award or town council approval.

Request for qualifications or RFQ (Non-CCNA) means a competitive solicitation method whereby all vendors are invited to submit statements of qualifications and state their interest in performing a specific job or service. From these statements of qualifications, the town evaluates based on a set of predetermined criteria and determines which vendors shall be selected and the town shall negotiate an agreement with the most qualified firm.

Responsible bidder or offeror means a person, business, not-for-profit entity, governmental entity or contractor who has the capability in all respects to fully perform the contract requirements and the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and record of timely and acceptable past performance that will assure good faith performance for a town project or purchase.

Responsive bidder or offeror means a person, business, not-for-profit entity, governmental entity or contractor whose response to a bid or proposal substantially conforms in all material respects to the requirements and criteria set forth in the invitation or solicitation. This includes such aspects as following bid instructions for proper submittal, completing all necessary forms included with the solicitation, providing information required by the solicitation, and complying with all terms, conditions and specification requirements as enumerated in the solicitation.

Reverse auction means a procurement method wherein bidders, anonymous to each other, electronically submit decrementing (reduction of cost) real time bids simultaneously over a designated period of time on designated supplies or services.

Services means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

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.

Single source refers to a supply source for goods or services to which purchases are directed because of issues related to standardization, warranty, or other factors, even though other competitive sources may be available.

Sole source refers to a situation created due to the inability to obtain competition. This situation may result because only one (1) vendor or supplier possesses the unique ability or capability to meet the particular requirements of the user, or situations where only one (1) economically viable source is capable of providing the service or item that the town seeks to purchase. Sole sources may be characterized by a marketplace where there is only one (1) vendor because items are patented or geographically franchised.

Specification means a precise description of the physical or functional characteristics of a product, good or construction item. A description of goods and/or services. A description of what the purchaser seeks to buy and what a bidder must be responsive to in order to be considered for award of a contract. Specifications generally fall under the following categories: design, performance, combination (design and performance), brand name or approved equal, qualified products list and samples. May also be known as a purchasing description.

Supplies means all tangible property, including, but not limited to: equipment, materials, and commodities required for ongoing operational town requirements including, but not limited to, equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Surplus property means any tangible personal property or real property no longer having use to the town. Surplus property includes obsolete supplies, scrap materials, and non-expendable supplies that have completed their useful life cycle.

Term contract or agreement means a contract in which a source or sources of supply are established to provide for needs for a specified period of time for specified services or supplies at an agreed upon unit price(s), percentage of mark-up, labor rate or discount off list price.

Town shall mean the Town of Davie, Florida, a political subdivision of the State of Florida.

Town council shall mean the legislative body of the town as defined in section 7 of the town charter.

Using agency/department means any department, division, activity, agency, board, commission, or other unit in town government that procures commodities, construction, or services which derive their support wholly or in part from town funds as provided in this article.

Vendor means an actual or potential supplier of an item, service, or construction.

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.

Any definition herein contained that conflicts with Florida Statutes, the Florida Statute definition shall control.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-318. Procurement division established; supervision.

There is hereby established a procurement division under the supervision of the procurement manager or designee.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-319. Responsibilities and authority.

- (a) *General.* Except as otherwise provided herein, the procurement manager shall have responsibility for the general supervision of the procurement division and shall perform all duties required and shall act as the principal public procurement officer for the town, responsible for the procurement of materials, supplies, services, equipment, construction and certain contractual services in accordance with this article, as well as the disposal of excess equipment or supplies.
- (b) *Responsibilities and authority.*
 - (1) All purchases of goods and services shall be processed through the procurement division. The procurement manager is hereby authorized to promulgate procedures for the requisitioning of materials, supplies, services, equipment, construction and certain contractual services in accordance with section 2-322(b).
 - (2) The procurement manager or designee shall have the authority to approve and execute all procurement-related items including, but not limited to, expenses, contracts, contract amendments and contract renewals, purchase orders, informal solicitations, and transactions in the amount of Category Two, as defined in the F.S. § 287.017(2) or less. The procurement manager may process purchase orders or other documents as assigned in excess of Category Two, as defined in the F.S. § 287.017(2) upon approval of (b)(4) or (6).
 - (3) For determining the above threshold the procurement manager approval is required for: a) any single transaction up to Category Two, as defined in the F.S. § 287.017(2), or b) multiple or as needed

transactions with the same vendor where the anticipated expenditure will be up to Category Two, as defined in the F.S. § 287.017(2) in any given fiscal year.

- (4) The town administrator or designee shall have the authority to approve and execute all procurement-related items including, but not limited to, expenses, contracts, contract amendments and contract renewals up to and equal to the amount of the threshold for purchasing Category Three, as defined in the F.S. § 287.017(3) or in excess of Category Three, as defined in the F.S. § 287.017(3) upon approval of (b)(6).
- (5) For determining the above threshold the town administrator approval is required for:
 - a. Any single transaction between Category Two, as defined in the F.S. § 287.017(2) and Category Three as defined by F.S. § 287.017(3), or
 - b. Multiple or as needed transactions with the same vendor where the anticipated expenditure will be between Category Two, as defined in the F.S. § 287.017(2) and Category Three, as defined in the F.S. § 287.017(3) in any given fiscal year.
- (6) The mayor or designee shall have the authority to execute all procurement-related expenses, includ[ing], but not limited to, contracts, contract amendments and contract renewals in excess of the threshold for purchasing Category Three, as defined in the F.S. § 287.017(3) after town council approval. Such execution shall be attested to by the town clerk. Execution of short-term leases and other procurement-related contract amendments and contract renewals in excess of the threshold for purchasing Category Three may be delegated to the town administrator or designee for execution.
- (7) For determining the above threshold the town council approval is required for:
 - a. Any single transaction that exceeds Category Three, as defined in the F.S. § 287.017(3), or
 - b. Multiple or as needed transactions with the same vendor where the anticipated expenditure will exceed Category Three, as defined in the F.S. § 287.017(3) in any given fiscal year.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-320. Cone of silence.

- (a) *Prohibited communication.* Except as set forth in subsection (d), during the course of a competitive solicitation, a cone of silence shall be in effect between:
 - (1) Any person or entity that seeks a contract, contract amendment, award, recommendation, or approval related to a competitive solicitation or that is subject to being evaluated or having its response evaluated in connection with a competitive solicitation, including a person or entity's representative; and
 - (2) Any town councilmember, the town administrator or any person or group of persons appointed or designated by the town council or the town administrator to evaluate, select, or make a recommendation to the town council or the town administrator regarding a competitive solicitation, including any member of the selection committee.
- (b) *Effective dates.* A cone of silence shall begin and shall end for competitive solicitations as follows:
 - (1) A cone of silence shall be in effect during a competitive solicitation process beginning upon the advertisement for the competitive solicitation or during such other procurement activities as declared by the town council.

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- (2) The cone of silence shall terminate at the time the town council or town administrator takes final action or gives final approval of a contract, rejects all bids or responses to the competitive solicitation, or takes other action which ends the competitive solicitation process.
- (c) *Notice.* When the cone of silence becomes effective for a particular competitive solicitation, the town administrator or designee shall provide notice of the cone of silence to the town council. The solicitation document for the goods or services shall generally disclose the requirements of this section. Notice of the termination of the cone of silence shall be provided in the award documentation to the town administrator and /or town council.
- (d) *Permitted communication.*
- (1) The cone of silence shall not apply to written or oral communications with legal counsel for the town or the procurement division staff for the town.
- (2) Nothing contained in this section shall prohibit any person or entity subject to this section from:
- a. Making public presentations at pre-bid conferences or at a selection or negotiation meeting related to the competitive selection.
 - b. Engaging in contract negotiations with the entity selected to negotiate the terms of the agreement or with the town council during a public meeting.
 - c. Making a scheduled public presentation to the town council during any public meeting related to the competitive solicitation.
 - d. Nothing contained in this section shall prohibit a town councilmember from initiating contact with a vendor or vendor's representative and subsequent communication related thereto for the purpose of obtaining further information regarding the competitive solicitation.
 - e. Nothing in this section shall prohibit a town council, the town council office personnel, and other town employees from communicating with each other except as prohibited under Chapter 119 of the Florida State Statutes.
 - f. Communicating with the person or persons designated in the competitive solicitation as the contact person for clarification or information related to the competitive solicitation. The contact person shall not be a member of the selection/evaluation committee, or the person designated to negotiate the agreement, except as otherwise provided for in subsection (d)(1) above.
- (3) The procurement manager or designee and the town attorney or designee shall accept written communications from persons or entities subject to this section during the time a cone of silence is applicable to a competitive solicitation.
- (e) *Violations.* Any action in violation of this section by a vendor or contractor shall be cause for disqualification of the bid or the proposal. The determination of a violation and the penalty shall be made by town council.
- (f) Any employee violating this section shall be subject to disciplinary action by the town administrator up to and including termination.
- (g) The cone of silence shall not apply to a competitive process which seeks to enter into a contract or award of money to perform governmental, quasi-governmental, social or human services primarily for charitable, benevolent, humanitarian or other philanthropic purposes, such as the award of grants or support assistance to organized nonprofit entities that promote or assist with the care, education, health, standard of living or general welfare of people in the Town of Davie, or that promote or assist community or neighborhood enhancements.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-321. Methods of source selection.

- (a) *General.* Except as otherwise provided by law, this article or by Charter; all contracts of the town involving dollar amounts in excess of the threshold for purchasing Category Two, as defined in F.S. § 287.017(2), as amended, shall be awarded through the use of a formal competitive process identified within this section.
- (1) *Competitive sealed bidding.*
- a. *Invitation to bid.* An invitation to bid may be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
 - b. *Public notice.* Adequate public notice of the invitation to bid shall be given a reasonable time, not less than ten (10) calendar days prior to the date set forth therein for the opening of bids, in accordance with procedures as may be promulgated by the procurement manager. The procurement manager shall designate a means of distribution or determination of information to interested parties using methods that are reasonably available. Such methods may include, but are not limited to, publication in newspapers of general circulation, web-sites designated and maintained for such notification or on a dedicated area on a web-site maintained by the town, or through the use of vendor list which may be maintained by the procurement division on an ongoing basis. Publication(s) in newspapers of general circulation must be at least one (1) time, with the notice published in the "Legal Notices" section of the newspaper at least ten (10) days prior to the bid opening date. Notices published on websites must be posted prior to or immediately upon release of the invitation for bid and remain available to the public until the scheduled bid opening date and time. Said notice shall state the place, date and time of the bid opening. When the projected cost of a town construction project exceeds the bid threshold set forth in F.S. § 255.0525(2), as amended, bids for that project shall be advertised in accordance with procedures outlined in said statute.
 - c. *Bid bonds.* When deemed necessary by the procurement manager may request a surety in the form of bid bonds or deposits as prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where the procurement manager has requested surety. A successful bidder shall forfeit any surety required by the procurement manager upon failure to provide the town with any further financial securities required by the contract such as, but not limited to, payment and performance bonds, warranty bonds or any other financial instruments within the time prescribed by the town.
 - d. *Addenda.* After an invitation for bid is issued and before the submission deadline, the procurement division may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the bid. The procurement manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
 - e. *Bid opening.* The following procedures shall apply to all bid openings:
 1. *Sealed.* Bids shall be submitted as specified in the solicitation and shall be clearly identified in accordance with the terms of the invitation for bid, as bids on the exterior of the envelope or other casing or wrapping sealing the contents of the bid from view.
 2. *Copies.* The appropriate number of copies of the bid as required by the invitation for bid shall be required to be submitted prior to bid opening.
 3. *Opening.* Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such

other relevant information as the procurement manager deems appropriate, together with the name of each bidder shall be recorded;

4. *Tabulation.* A tabulation of all bids, and each bid shall be open to public inspection in accordance with the Florida Public Records law.
 5. *Late receipt.* No late bids shall be accepted or opened; if received after the date and time called for in the bid notice, late bids shall be returned unopened to the bidder.
- f. *Bid acceptance.* Bids shall be unconditionally accepted without alteration or correction except as authorized in this Code.
- g. *Correction or withdrawal of bids; cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids shall be permitted up to the time of bid opening. Mistakes discovered before bid opening may be withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for bid opening. Any modification prior to the bid opening must be submitted in a sealed envelope prior to the scheduled opening of the bid.

After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interests of the town or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake may be permitted to withdraw its bid if:

1. The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident, or
2. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids after bid opening, based on bid mistakes, shall be supported by a written determination made by the procurement manager.

- h. *Bid evaluation.* Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used, including past performance. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.
- i. *Award.* The contract shall be awarded with reasonable promptness to the lowest, fully responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bid. In the event all the low responsive and responsible bid for a project exceeds available funds, the procurement manager is authorized, when time of economic considerations preclude re-solicitation to negotiate a reduced scope of work and an appropriate adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. In determining the lowest responsive and responsible bidder, in addition to price, town officials may consider other factors that relate directly to the bidder's level of responsibility pursuant to the requirements of section 2-321(a)(1)h of this Code. The town also reserves the right to reject all responses if in the best interest of the town by providing a written notice of intent signed by the requesting department director and the procurement manager or designees.
- j. *Award to other than low bidder.* When award of a solicitation is not granted to the lowest priced, a statement of the reason for award to the next lowest responsive and responsible bidder shall be prepared and made a part of the notice of intent.

k. *Tie bids.*

1. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded based on the following criteria to be considered in the following order of priority:
 - (i) A local bidder with a primary business location within the Town of Davie.
 - (ii) A local bidder with a primary business location within Broward.
 - (iii) A bidder with a primary business location within the State of Florida.
2. The town may split the award of a contract when it is to the town's advantage.
3. Where subsections (a)(1)k.1.(i) through 1.(iii) of this section are not in effect, and all other potential remedies have been exhausted, the tie bid may be resolved by lottery. Such lottery shall be conducted by the town administrator or designee and shall be open to the public.

(2) *Electronic auctions/reverse auctions.*

- a. The town may award contracts for supplies and nonprofessional services by electronic auctions, otherwise known as reverse auction, a procurement method where bidders, anonymous to each other, electronically submit real time bids. During the bidding process, bidders' prices are revealed, and bidders shall have the opportunity to modify their bid prices for the duration of the time period established by the solicitation. Award shall be made to the lowest responsive and responsible bid. The town also reserves the right to reject all responses if in the best interest of the town.
- b. *Public notice.* Adequate public notice of the electronic auction/reverse auction shall be given in the same manner as provided in subsection (a)(1)b of this section.
- c. *Bid bonds.* When deemed necessary by the procurement manager, bid bonds or deposits may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where the procurement manager has requested surety. A successful bidder shall forfeit any surety required by the procurement manager upon failure on the part of the bidder to enter into a contract within ten (10) days after the award.
- d. *Addenda.* After an invitation for bid is issued and before the actual occurrence of the electronic auction/reverse auction, the procurement division may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the bid. The procurement manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
- e. *Bid submission.* Bid pricing shall be submitted by electronic means following procedures as prescribed by the procurement manager.
- f. *Acceptance, evaluation and award.* Bids shall be accepted, evaluated and awarded consistent with the requirements of subsection (a)(1)h of this section.

(3) *Competitive sealed proposals (request for proposals).*

- a. When the procurement manager determines that the use of competitive sealed bidding is either not practicable or not advantageous to the town, a contract may be entered into by the use of the competitive sealed proposal method.
- b. *Public notice.* Adequate public notice of the request for proposals (RFP) shall be given in the same manner as provided in subsection (a)(1)b of this section.

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- c. *Addenda.* After a request for proposals is issued and before the submission deadline, the procurement division may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the RFP. The procurement manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
 - d. *Receipt of proposals.* Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with regulations and shall be open for public inspection in accordance with Chapter 119, Florida Public Records Law, Florida Statutes, as amended.
 - e. *Evaluation criteria.* The request for proposals shall state the criteria to be used in the evaluation of the proposals.
 - f. *Evaluation committee.* The town administrator or designee shall approve any recommended evaluation committee to evaluate and make a recommendation based on the criteria set forth in the request for proposals. The procurement manager shall recommend prospective members for the committee who may include but shall not be limited to, representatives of the end user department including any assigned project manager, or individuals who may possess a level of skill or expertise related to the scope of work. All meetings of an evaluation committee shall be open to the public in accordance with the Florida Sunshine law, as amended, and public notice shall be conspicuously posted by the town.
 - g. *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably acceptable for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining BAFOs. In conducting such discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. In the event of receipt of an adequate number of proposals, which in the opinion of the evaluation committee require no clarification and/or supplementary information, such proposals may be evaluated without discussion or need for presentations.
 - h. *Award.* Award shall be made to the responsive and responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the town 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 upon which the award is made. The town reserves the right to waive any and all formalities of the proposal procedure and to award the proposal in the best interest of the town. The town also reserves the right to reject all proposals if in the best interest of the town by providing a written notice of intent signed by the requesting department director and the procurement manager or designees.
- (4) *Invitation to negotiate.*
- a. *Determination of use.* When the procurement manager determines that a procurement request is not suitable for an invitation for bid or request for proposals, and that concurrent negotiation with one (1) or more vendors may be necessary for the town to receive the best value, the procurement manager may procure commodities and contractual services by competitive sealed replies solicited through an invitation to negotiate. This source selection method does not apply to procurements subject to the Consultants' Competitive Negotiation Act, F.S. 287.055, unless expressly permitted by statute.

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- b. *Public notice.* Adequate public notice of the invitation to negotiate shall be given in the same manner as provided in subsection (a)(1)b of this section.
 - c. *Addenda.* After an invitation to negotiate is issued and before the submission deadline, the procurement division may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the invitation to negotiate. The procurement manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
 - d. *Receipt of competitive sealed replies by invitation to negotiate.* Responses shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Submittals shall be open for public inspection in accordance with Florida's Public Records Law, as amended.
 - e. *Evaluation criteria.* Responsive replies shall be evaluated and ranked against all evaluation criteria as set forth in the invitation to negotiate, and based on the ranking, one (1) or more respondents shall be selected with which to commence negotiations.
 - f. *Evaluation committee.* The town administrator or designee shall approve any recommended evaluation committee to evaluate and make a recommendation based on the criteria set forth in the invitation to negotiate. The procurement manager shall recommend prospective members for the committee who may include but shall not be limited to, representatives of the end user department, including any assigned project manager, or individuals who may possess a level of skill or expertise related to the scope of work. All meetings of an evaluation committee shall be open to the public in accordance with the Florida Sunshine law, as amended, and public notice shall be conspicuously posted by the town.
 - g. *Negotiations with respondents.* Negotiations may be conducted with respondents. The town will utilize either sequential or concurrent negotiation methods.
 - 1. *Sequential negotiations:* The town may consider the respondent's statements of qualifications without consideration to price and may select the most qualified respondents as finalists. The town may conduct interviews with all finalists and rank the responses without regard to price. Exclusive negotiations as to the scope of work, terms and price may be conducted with the respondent providing the proposal ranked as most advantageous to the town. If an agreement is not reached, the town may commence negotiations with the successive ranked respondents until an agreement is attained.
 - 2. *Concurrent negotiations:* The town may consider the respondent's statement of qualification and price; however, both are subject to future negotiations. The town may select a group of the most qualified respondents as finalists and commence simultaneous negotiations with each regarding the scope of work and price. Final BAFOs may be requested of the finalists. In determining the best value, the negotiation team may re-rank the respondents. Award of a contract is made to the respondent representing the best value to the town.
 - h. *Award.* Contract award shall be made to the respondent whose negotiated agreement is determined to be the best value to the town considering final negotiated pricing and other criteria as specified in the invitation to negotiate. The contract file shall contain the basis upon which the award was made. The town also reserves the right to reject all proposals if in the best interest of the town by providing a written notice of intent signed by the requesting department director and the procurement manager or designees.
- (5) *Request for qualifications.*

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- a. *Determination of use.* When the procurement manager determines that a procurement request is not suitable for an invitation for bid or request for proposals, and that negotiation with one (1) or more vendors may be necessary for the town to receive the best value, the procurement manager may procure professional contractual services by competitive sealed replies solicited through a request for qualifications (RFQ).
 - b. *Public notice.* Adequate public notice of the request for qualifications shall be given in the same manner as provided in subsection (a)(1)b of this section.
 - c. *Addenda.* After a request for qualifications is issued and before the submission deadline, the procurement division may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the request for qualifications. The procurement manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
 - d. *Receipt of competitive sealed replies by request for qualifications.* Responses shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Submittals shall be open for public inspection in accordance with Florida's Public Records Law, as amended.
 - e. *Evaluation criteria.* Responsive replies shall be evaluated and ranked against all evaluation criteria as set forth in the request for qualifications and based on the ranking, one (1) or more respondents shall be selected with which to commence negotiations.
 - f. *Evaluation committee.* The town administrator or their designee shall approve any recommended evaluation committee to evaluate and make a recommendation based on the criteria set forth in the request for qualifications. The procurement manager shall recommend prospective members for the committee who may include but shall not be limited to, representatives of the end user department, including any assigned project manager, or individuals who may possess a level of skill or expertise related to the scope of work. All meetings of an evaluation committee shall be open to the public in accordance with the Florida Sunshine law, as amended, and public notice shall be posted by the town.
 - g. *Negotiations with respondents.* Negotiations may be conducted with respondents. The town will utilize sequential negotiation methods. The town may consider the respondent's statements of qualifications without consideration to price and may select the most qualified respondents as finalists. The town may conduct interviews with all finalists and rank the responses without regard to price. Exclusive negotiations as to the scope of work, terms and price may be conducted with the respondent providing the proposal ranked as most advantageous to the town. If an agreement is not reached, the town may commence negotiations with the successive ranked respondents until an agreement is attained.
 - h. *Award.* Contract award shall be made to the respondent whose negotiated agreement is determined to be the best value to the town considering final negotiated pricing and other criteria as specified in the invitation to negotiate. The contract file shall contain the basis upon which the award was made. The town also reserves the right to reject all proposals if in the best interest of the town by providing a written notice of intent signed by the requesting department director and the procurement manager or designees.
 - i. *Continuing services contracts.* Continuing services contracts are defined as contracts for professional services entered into in accordance with F.S. § 287.055, whereby a firm provides professional services for projects in which construction costs, and costs for a study activity do not exceed the then current thresholds outlined in F.S. § 287.055, or for work of a specified nature as outlined in the contract required by the town, with no time limitation except the contract must

provide a termination clause. Continuing services contracts shall be awarded using a qualifications-based selection procedure in accordance with F.S. § 287.055.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-322. Small purchase procedures.

- (a) *General.* Any procurement not required to be conducted pursuant to the terms and conditions of section 2-321 of this Code, ("Methods of source selection"), shall be made in accordance with the operational procedures and thresholds for informal small purchases.
- (b) *Delegation of authority.* The procurement manager may establish operational procedures delegating authority for town departments to obtain written or oral quotations and issue small dollar procurements directly to vendors for purchases below the purchasing Category Two threshold as defined in the most current version of F.S. § 287.017(2), as amended.
- (c) *Requirements for quotations.* The procurement manager, or designee, or by a department or division, as delegated by the procurement manager, may solicit informal quotations by any one (1) or more of the following methods, subject to subsection (b) of this section:
 - (1) By direct mail or requests to prospective vendors;
 - (2) By telephone, facsimile or e-mail;
 - (3) By public notice posting on a website or bulletin board at Town Hall;
 - (4) By use of a third-party internet hosting site;
 - (5) By reverse auction.
- (d) *Quotation threshold.* The following dollar thresholds shall apply to the requirement for quotations for small market purchases made by the town. The procurement division shall develop procedures for processing quotations within the guidelines established.

\$0.00—\$5,000	Minimum of one (1) quotation required.
\$5,000.01—Up to the limit of Category Two, as defined in the F.S. § 287.017(2)—Informal threshold.	Minimum of three (3) attempted written quotations.
From the limit of Category Two, as defined in the F.S. § 287.017(2)—Formal threshold	Formal written quotations or proposals required.

In the event that fewer than three (3) quotations are received, the town may consider those quotations received; however, the procurement manager or designee reserves the right to validate the availability of suppliers for an item or service.

- (e) *Procurement cards.* The procurement manager shall have the authority to issue town procurement cards to employees at the request of the department director and as approved by the budget and finance director and the town administrator or designee. The procurement manager shall develop operational policies and procedures for the use of the procurement cards, which shall be adopted as an administrative policy.
- (f) *Petty cash.* The budget and finance director may promulgate rules and regulations governing petty cash purchases as appropriate.
- (g) *Unauthorized purchasing practices.* An unauthorized purchase occurs when any employee of the town orders, contracts for or buys any materials or supplies outside the purview of the Town Charter and/or this Code and any other budget and finance policies and procedures promulgated by the budget and finance director. Any individual making an unauthorized purchase may be subject to disciplinary actions as

appropriate, which may include termination and/or prosecution. The following are unauthorized purchasing practices:

- (1) Artificially dividing purchases into multiple segments in an attempt to issue single orders below the dollar threshold requirements as established herein (also known as "stringing" or "splitting purchases") is prohibited.
 - (2) Purchasing any supplies or services above the thresholds delineated herein directly from a vendor, bypassing the procurement division.
 - (3) Committing to a purchase without issuance of an authorized purchase order, when one is required.
 - (4) Providing false information such as false quotations.
 - (5) Adding unauthorized purchases to previously approved purchase orders without approval of the appropriate approval authority and subsequent modification of the purchase order.
- (h) *Change orders.* The town administrator or designee is authorized to initiate and approve change orders determined in the judgment of the town administrator or designee to be in the public interest as follows:
- (1) All change orders decreasing the cost of the contract to the town; providing, however, such decrease does not materially alter the character of the work contemplated by the contract;
 - (2) All change orders increasing the cost of the contract to the town, up to the formal competitive purchasing Category Three threshold as defined in the most current version of F.S. § 287.017(3), provided that sufficient budgeted funds are available.
 - (3) All other change orders must be formally approved by the town council before work may be authorized to begin; and no claim against the town for extra work in furtherance of such change order shall be allowed unless prior written authorization has been provided, notwithstanding any other provision, contractual or otherwise.
 - (4) Change orders shall not artificially be distributed or divided so as to bring the amount within the approval level of the town administrator, and any such proposed change order shall include within it all logically connected work required to be done at the time of the proposal.
 - (5) Work defined by the scope of a change order may not be commenced until obtaining final approval of the change order, except where such work is of an emergency nature as defined in section 2-323(c) of this Code.

(Ord. No. 2021-020, § 2(Exh. A), 8-4-21)

Sec. 2-323. Exclusions and exceptions to bid and proposal requirements.

The following items are deemed exempt from the competitive bidding process but are still subject to the approvals in accordance with section 2-319.

- (a) *Exclusions:*
- (1) The procurement of dues and memberships in trade or professional organizations; registration fees for trade and career fairs, subscriptions for periodicals and newspapers; advertisements; postage; expert witness; legal and mediation services; lobbying services; abstracts of title for real property; title searches and certificates; title insurance for real property; real estate appraisal services; water, sewer, telecommunications and electric utility services; copyrighted materials or patented materials including, but not limited to, technical pamphlets, published books, maps, testing or instructional materials; fees and costs of job-related seminars and training;

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- (2) The purchase, care and boarding of animals such as police K-9s, patrol horses and other animals that require specialized training and behavior characteristics that must be evaluated and tested for a period of time prior to acceptance;
 - (3) Items purchased for resale to the general public; for example, supplies for a town-owned concession area.
 - (4) Purchase of groceries;
 - (5) Artistic services or works of art;
 - (6) Travel expenses, hotel accommodations and hotel services;
 - (7) Town-sponsored events held at venues not owned by the town;
 - (8) Entertainment and entertainment-related services for town-sponsored events including, but not limited to, face painting artist, petting zoos, props, decorations, bounce houses DJs and musicians;
 - (9) Purchase of motor vehicle license plates from a governmental agency;
 - (10) Persons or entities retained as "expert consultants" to assist the town in litigation, or in threatened or anticipated litigation;
 - (11) Educational or academic programs;
 - (12) Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration;
 - (13) Auditing services that are not subject to the requirements of F.S. Chapter 218, Part III;
 - (14) Any services identified in F.S. § 287.057, as may be amended from time to time, as being exempt from competitive bid/request for proposal requirements.
 - (15) Additional software and hardware licensing and maintenance for software and hardware the town already owns/licenses. This shall include subscription-based software fees that are unique or preexistent and contain historical knowledge that cannot be easily or without cost moved to another software application;
 - (16) Purchase, rental or lease of real property that is in the best interest of the town;
 - (17) Auctioneer services, vending services, bus bench advertising or other revenue related contracts as approved by the town administrator or designee.
- (b) *Sole and single source procurements.*
- (1) A contract may be awarded for materials, supplies, services, equipment, construction and/or certain contractual services without competition when the procurement manager or a designee determines in writing that there is only one (1) economically feasible source for the required materials, supplies, services, equipment, construction and/or certain contractual services, or when requirements for standardization, warranty, geographic and territorial restrictions, or other factors create a situation where competition is either not feasible or practicable.
 - (2) The procurement manager or designee may conduct negotiations, as appropriate, regarding price, delivery and terms. The town department requesting a single, or sole source procurement must submit a written request to the procurement manager for approval, which must be accompanied by a written justification signed by the department head. The justification must document the purpose of the purchase, the reason(s) for the single or sole source purchase, and a summary of attempts to obtain competition.

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- (3) The procurement division shall post on the town's website a notice of intent to sole/single source for a period of no less than seven (7) days.
 - (4) Sole source purchase requests in excess of the purchasing Category Three threshold as defined in F.S. § 287.017(3), as amended, must be approved by the town council. A record of sole source purchases shall be maintained by the town and shall list each vendor's name and purchase information included.
- (c) *Emergency procurements.*
- (1) Notwithstanding any other provision of this Code, the town administrator or designee may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be provided by the town administrator to the town council and included in the contract file.
 - (2) The town administrator is authorized to determine if an emergency exists for purposes of emergency purchases and procurements. If an emergency does exist, the town administrator shall authorize emergency expenditures for the procurement or temporary acquisition of supplies, equipment and services necessary to meet the town's needs as a result of the emergency and may delegate authority for a department head or other designee to secure emergency proposals. The town administrator, the procurement manager, or the designee shall endeavor to secure proposals from at least two (2) separate sources if possible.
 - (3) Any emergency procurement exceeding the award authority of the town administrator shall be reported to the town council in writing or at a town council meeting, no later than ninety (90) working days after the determination that the emergency situation has been stabilized and that no further emergency expenditures are required.
- (d) *Cooperative purchasing.* When deemed to be in the best interests of the town, the procurement manager may participate in, sponsor, conduct or administer contracts under a cooperative purchasing program with one (1) or more governmental units for the procurement of any materials, supplies, services, equipment, construction and/or certain contractual services. Such cooperative purchasing programs may include, but not be limited to, joint or multiparty contracts between public procurement units and open-ended public procurement term contracts that are made available to other governmental units. Once the active contract is used as the basis of a cooperative contract by the town, the contract shall not be impaired by the future decisions or actions of the other agency. The town shall adopt the contract as its own agreement and shall not be associated or connected in any manner with the initiating agency that originally solicited the contract. The town may negotiate the terms of the contract to ensure legal sufficiency and protect the town's best interests to the point in which it does not alter the originally intended products, pricing (unless further discounts are offered) or services.
- (e) *Purchases from other governmental entities.* Purchases of goods or services from the federal government, any state or political subdivision thereof, or any municipality are exempt from the requirements of this section.
- (f) *Piggybacking.* The purchases of goods or services based upon contracts awarded by other governmental or not-for-profit entities by a competitive bid, selection or negotiated process. This includes the purchase of goods or services under a contract awarded by the United States Government or another governmental or not-for-profit entity by a competitive bid, selection or negotiated process is authorized provided the procurement manager makes a determination that time, expense and marketplace factors make it financially advantageous for the town to do so. The town shall adopt the

contract as its own agreement and shall not be associated or connected in any manner with the initiating agency that originally solicited the contract. The town may negotiate the terms of the contract to ensure legal sufficiency and protect the town's best interests to the point in which it does not alter the originally intended products, pricing (unless further discounts are offered) or services. Once the other agency's active contract is used as the basis of a piggyback by the town, the piggyback shall not be impaired by the future decisions or actions of the other agency.

- (g) *Professional services.* Contracts for the service of professionals, including, but not limited to, the practice of law, management consulting, medicine, real estate appraisal, or other area of expertise as determined by the town administrator or designee to be in the best interest of the town, and not otherwise subject to the requirements of F.S. § 287.055, as amended, may be entered into without competitive bidding, however, qualifications, work history and other relevant data shall be reviewed before entering into such contracts. Professional services contracts that exceed the threshold established in subsection 2-319(b) of this Code will require approval by the town council. Nothing herein in the procurement code shall pertain to employment contracts for town employees.
- (h) *Owner direct purchase.* A contract may be awarded for supplies or materials without competition where such supplies or materials are being procured by the town as an owner direct purchase for incorporation into a public works or capital expenditure project, the contract for which was previously awarded by the town, which prior award included the cost of such supplies and materials. In such event, the town shall procure the supplies or materials in accordance with Florida Statutes and regulations related to owner direct purchases by governmental entities.
- (i) *Waiver of procurement procedures.* Upon written recommendation of the procurement manager the town administrator may waive procurement procedures up to the threshold of F.S. § 287.017(3), as amended, the town council may authorize the waiver of procurement procedures that exceed the threshold of F.S. § 287.017(3), as amended that it is in the town's best interest to do so to obtain goods and services which cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors. Purchases authorized by the waiver process shall be acquired with such competition as is practicable under the circumstances and only after a good faith review of all available sources and negotiation as to price, delivery and terms. There shall be no waiver of procurement procedures for procurements that are subject to the provisions of F.S. § 287.055 or § 255.20, as amended.

(Ord. No. 2021-020, § 2(Exh. A), 8-4-21)

Sec. 2-324. Bonds and security requirements.

- (a) *Bid security.*
 - (1) The procurement manager may require the submission of a bid security to guarantee full and faithful performance of a solicitation. In determining the amount and type of bid security required, the procurement manager or designee shall consider the nature of the solicitation and performance required to protect the town during the term of the contract. Bid security shall be a bond provided by a surety company licensed to do business in the State of Florida or the equivalent in cash or otherwise supplied in a form satisfactory to town and approved by the procurement manager.
 - (2) *Amount of security.* Bid security shall be in an amount equal to at least five (5) percent of the amount of the bid.
 - (3) *Rejection of bids for noncompliance with bid security requirements.* When the invitation for bids requires security, noncompliance requires that the bid be rejected unless, pursuant to regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements.

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- (4) If a bidder is permitted to withdraw its bid before award as provided in subsection 2-321(a)(1)g of this Code no action shall be taken against the bidder or the bid security.
- (b) *Performance and payment bonds.*
- (1) When a construction contract is awarded in excess of two hundred thousand dollars (\$200,000.00), the following bonds as security shall be delivered to the town and shall become binding on the parties upon execution of the contract as required in F.S. § 255.05 and F.S. § 713.01, as either statute may be amended.
- a. *Performance bond:* Required to ensure the completion of a project in the event of contract breach or forfeiture by the contractor.
- b. *Payment bond:* Required to ensure the payment of sub-contractors and suppliers to a contractor, for work completed in the event of contract breach or forfeiture by the contractor.
- (2) *When required.*
- a. The procurement manager shall require performance and payment bonds for all contracts for the construction of a public building or public work, or for repairs upon a public building or a public work whose estimated construction cost exceeds the thresholds established by subsection (b)(1) of this section.
- b. Performance and payment bonds may also be required, at the discretion of the procurement manager, for construction work estimated to cost less than the thresholds established by F.S. § 255.05, as amended. Performance and payment bonds shall be executed by a surety company authorized to do business in the State of Florida in an amount equal to one hundred (100) percent of the contract price or otherwise secured in a manner satisfactory to the town. The bonds shall be recorded in the public records of Broward County, Florida.
- (3) *Reduction of bond amounts.* The procurement manager shall be authorized to reduce the amount of performance and payment bonds when conditions warrant, and when there is no statutory requirement for performance and payment bonds.
- (4) In lieu of a performance and payment bond, the town may accept cash, money order, certified check, cashier's check, or irrevocable letter of credit in the amount of one hundred (100) percent of the contract price. Such alternate form of security shall be for the same purpose and shall be subject to the same conditions as a performance and payment bond.
- (c) *Guidelines and standards for surety companies.* The procurement manager in consultation with the town's risk manager may establish minimum guidelines and standards for surety companies providing performance and payment bonds to the town on behalf of a contractor.
- (d) *Use of town forms.* The town reserves the right to require that all bid sureties, performance and payment bonds be submitted on forms prescribed by the town. The procurement manager or designee may include copies of any prescribed bond forms as a part of the solicitation document provided to bidders and proposers.

(Ord. No. 2021-020, § 2(Exh. A), 8-4-21)

Sec. 2-325. Insurance requirements.

The procurement manager with the concurrence of the risk manager may establish guidelines for determining the type and minimum limits of liability, workers' compensation and other forms of insurance coverage that may be required for each type of contract. The Town of Davie shall be named as an additional insured for any required general liability coverage. From time to time, the town may require a contractor or

consultant to provide the town with professional liability errors and omissions coverage. Firms unable to comply with the requirements of this section may be considered to be non-responsive vendors and precluded from doing business with the town.

(Ord. No. 2021-020, § 2(Exh. A), 8-4-21)

Sec. 2-326. Local vendor preference.

(a) *Definitions.*

Bid shall mean any competitive solicitation by specification officially posted by the Town of Davie Procurement staff on the town's website where the award is determined by the lowest responsible and responsive bidder.

Local Broward County vendor shall mean a person or business entity which has maintained a permanent place of business with full-time employees within the Broward County limits for a minimum of six (6) months prior to the date of issuance of a bid or proposal solicitation. The permanent place of business may not be a post office box or a residence. The business location must actually distribute goods or services from that location. In addition, the business must have a current business tax receipt from the Broward County or the city within Broward County where the business resides and have an address that the U.S. Postal Service recognizes as being a Broward County address to be eligible.

Local Davie vendor shall mean a person or business entity which has maintained a permanent place of business with full-time employees within the town limits for a minimum of six (6) months prior to the date of issuance of a bid or proposal solicitation. The permanent place of business may not be a post office box or a residence. The business location must actually distribute goods or services from that location. In addition, the business must have a current business tax receipt from the Town of Davie and have an address that the U.S. Postal Service recognizes as being a Davie address to be eligible.

Proposal shall be any competitive solicitation by request for proposal (RFP) officially posted by the Town of Davie purchasing staff on the town's website where the award is determined by qualifications.

(b) *Process.*

- (1) *Competitive bid.* For bid evaluation purposes, vendors that meet the definition of "local Davie vendor" as detailed above shall be given a five (5) percent evaluation credit. This shall mean that if a "local Davie vendor" submits a bid/quote that is within five (5) percent of the lowest price submitted by any vendor, the "local Davie vendor" shall have an option to submit another bid which is at least one (1) percent lower than the lowest responsive bid/quote. If the "local Davie vendor" submits a bid which is at least one (1) percent lower than that lowest responsive bid/quote, then the award will go to the "local Davie vendor." If not, the award will be made to the vendor that submits the lowest responsive bid/quote. If the lowest responsive and responsible bidder is a "local Davie vendor," the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein.

For bid evaluation purposes, vendors that meet the definition of "local Broward County vendor" as detailed above shall be given a two and one-half (2.5) percent evaluation credit. This shall mean that if a "local Broward County vendor" submits a bid/quote that is within two and one-half (2.5) percent of the lowest price submitted by any vendor, the "local Broward County vendor" shall have an option to submit another bid which is at least one (1) percent lower than the lowest responsive bid/quote. If the "local Broward County vendor" submits a bid which is at least one (1) percent lower than that lowest responsive bid/quote, then the award will go to the "local Broward County vendor." If not, the award will be made to the vendor that submits the lowest responsive bid/quote. If the lowest responsive and

responsible bidder is a "local Davie vendor", the award will be made to that vendor and no other bidders will be given an opportunity to submit additional bids as described herein.

If there is a "local Davie vendor" and a "local Broward County vendor" participating in the same bid solicitation and both vendors qualify to submit a second bid as detailed above, the "local Davie vendor" will be given first option. If the "local Davie vendor" cannot beat the lowest bid received by at least one (1) percent, an opportunity will be given to the "local Broward County vendor." If the "local Broward County vendor" cannot beat the lowest bid by at least one (1) percent, then the bid will be awarded to the lowest bidder regardless of geographic location of the business.

If multiple "local Davie vendors" submit bids/quotes which are within five (5) percent of the lowest bid/quote, then all vendors will be asked to submit a "best and final offer (BAFO)." The award will be made to the "local Davie vendor" submitting the lowest BAFO providing that that BAFO is at least one (1) percent lower than the lowest bid/quote received in the original solicitation. If no "local Davie vendor" can beat the lowest bid/quote by at least one (1) percent, then the process will be repeated with all "local Broward County vendors" who have submitted a bid/quote which is within two and one-half (2.5) percent of the lowest bid/quote. If no "local Davie vendor" and no "local Broward County vendor" can submit a BAFO that is at least one (1) percent lower than the lowest bid/quote submitted in the original solicitation, the award will be made to the lowest responsive bidder regardless of geographic location of the business.

- (c) *Competitive proposal.* For evaluation purposes, "local Davie vendor" and "local Broward County vendor" shall be a criterion for award in any request for proposal unless specifically exempted by the town administrator or the town council.
- (d) *Exceptions.*
 - (1) No "local vendor" preference will be included in any competitive solicitation where the town is the lead agency for the Southeast Florida Cooperative Purchasing Group.
 - (2) Utilization of a state or other agency contract.
 - (3) State or federal law prohibits the use of local preference.
 - (4) The work is funded in whole or in part by a governmental entity where the laws, rules, regulations or policies prohibit the use of local preferences.
 - (5) Sole source or single source purchases.
 - (6) The "local vendor" is either non-responsive or non-responsible.
 - (7) All bids submitted exceed the budget amount for the project.
 - (8) Emergency purchases.
 - (9) The town administrator and/or the town council may exempt any competitive solicitation from the local vendor preference.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-327. Procurement of construction and professional design services.

- (a) *Procurement of construction delivery methods.* Contracts for construction services shall be procured in accordance with Florida Statutes and with established procurement procedures and delivery methods approved by the procurement manager or designee. Construction delivery methods may include, but are not limited to, design-bid-build, design/build, construction manager-at-risk, job order-contracting, fixed price, or other approved methods.

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- (b) *Bonds and insurance requirements for construction projects.* The town shall require bonds and insurance from contractors for construction projects as prescribed in sections 2-324 and 2-325 of this Code.
 - (c) *Professional design services.* Contracts for professional design services, including architectural, professional engineering, landscape architecture or registered surveying or mapping services must be procured in accordance with the Consultants' Competitive Negotiations Act F.S. § 287.055, as amended, in accordance with the requirements of section 2-321(a)(2) of this Code, ("Methods of source selection; Competitive sealed proposals") utilizing a qualifications based procurement process which shall not permit the use of price as an evaluation factor.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-328. Appeals and remedies.

- (a) *Applicability.* This section shall apply to protests by bidders and proposers regarding claims made by contractors participating in a town contract or bidding process and shall only apply to protests by bidders or offerors when the town procurement division posts a notice of intent to award in regards to a purchase in excess of the town's formal competitive threshold as established in section 2-321(a) "Methods of source selection; General" of this Code.
 - (1) *Protests; right to protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the procurement manager. The protest shall be submitted in writing within seventy-two (72) hours excluding holidays and weekends after such aggrieved person knows or should have known of the facts giving rise thereto or the posting of the town's notice of intent to award on the town's website.
 - (2) *Contract claims.* All claims by a contractor against the town relating to a contract shall be submitted in writing to the procurement manager. The contractor may request a conference with the procurement manager on a submitted claim. Claims include, without limitation, disputes arising under a contract and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
 - (3) *Service of a protest.* Service of a protest by mail or courier shall not expand the time frame period allowed for delivery of a protest.
- (b) *Authority to resolve protests and contract claims.*
 - (1) *Protests.* The procurement manager, after consulting with the town attorney, shall have the authority consistent with this Code to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.
 - (2) *Contract claims.* The procurement manager, after consulting with the town attorney, shall have the authority to resolve contract claims, subject to the approval of the town administrator or town council, as applicable, regarding any settlement that will result in a change order or contract modification.
- (c) *Decision.* If a protest brought pursuant to subsection (a) of this section is not resolved by mutual agreement, the procurement manager shall promptly issue a decision in writing to the protesting party upholding or denying the protest or staying the award process for further investigation. A copy of the decision shall be mailed or otherwise furnished to the protestant or claimant and any other party intervening. The decision shall state the reasons for the action taken.
- (d) *Finality of decision.* A decision under subsection (c) of this section shall be final unless within three (3) business days from the date of receipt of the decision, the protestant or claimant files a written appeal with the town administrator.

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- (e) *Authority of the town administrator.* The town administrator shall have the jurisdiction to review and determine any appeal by an aggrieved party from a determination by the procurement manager regarding a protest or contract claim. Such decision shall be final and conclusive.
- (f) *Protest limitations:*
- (1) A written protest may not challenge the relative weight of evaluation criteria or a formula for assigning points.
 - (2) The written protest shall state in detail the specific facts and law or ordinance upon which the protest of the proposed award is based and shall include all pertinent documents and evidence.
 - (3) Only a bidder whose bid is timely received and fully complies with all terms and conditions of the bid may protest an award.
- (g) *Protest bond required.* Upon the filing of a formal written protest the contractor or vendor shall post a bond, payable to the Town of Davie, in an amount equal to five (5) percent of the total bid or estimated contract amount, or ten thousand dollars (\$10,000.00), whichever is less. In the case of unit cost contracts, discount or percentage-based contracts the full ten thousand dollars (\$10,000) shall be provided. The bond shall be conditioned upon the payment of all costs which may be adjudged against the protesting contractor or vendor in the event the protest is resolved adversely to the protester. An irrevocable letter of credit or other form of approved security, payable to the town, will be accepted. Failure to submit a bond simultaneously with the formal written protest shall invalidate the protest and the town may proceed to award the contract as if the protest had never been filed.
- (h) *Consideration of timely protests.* The town's consideration of a timely written protest shall not necessarily stay the award process, as may be in the best interest of the town. The procurement manager, through the town administrator, may recommend to proceed with the award if there is a necessity or emergency that will cause loss to the town if not awarded immediately.
- (i) *Timely submittal of protest or appeal required.* Failure of a party to submit timely a written protest to the procurement manager within the time provided in this section shall constitute a waiver of such party's right to protest pursuant to this section.
- (j) *Costs.* Any and all costs incurred by a protesting party in connection with a protest pursuant to this section shall be the sole responsibility of the protesting party.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-329. Authority to debar or suspend.

- (a) *Authority.* The procurement manager shall provide written notice to any party under review for potential suspension and/or debarment. The notice shall state the grounds for the potential suspension and/or debarment and shall offer the party the opportunity to respond to those grounds in writing. The procurement manager may also hold a meeting with the party to discuss those grounds, if the procurement manager determines a meeting is appropriate. After consideration of the party's written response and/or meeting with the party, the procurement manager may, after consultation with the town attorney's office, suspend or debar the party from consideration for award of future town contracts. For purposes of this part, "party" means any individual or entity. Debarment shall not be for a period of more than five (5) years.
- (b) *Causes for suspension.* The procurement manager may suspend a party when the procurement manager has probable cause to debar the party. A vendor may not be suspended for longer than three (3) months unless the town has commenced debarment proceedings against the vendor, in which case the suspension may last until the debarment proceedings are concluded.

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- (c) *Causes for debarment or suspension.* The causes for debarment or suspension include the following:
- (1) Conviction for the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (2) 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 currently, seriously, and directly affects responsibility as a contractor;
 - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals or contracts;
 - (4) Violation of contract provisions, as set forth below, of a character which is regarded by the procurement manager to be so serious as to justify debarment action:
 - a. Deliberate failure without good cause to perform in accordance with the contract documents or within the time limit provided in the contract;
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) 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;
 - c. Refusal to perform a contract after a contract is accepted by the town and awarded to the vendor;
 - d. If a party made material misrepresentations in response to or related to a solicitation;
 - e. If a party is debarred by another governmental entity;
 - f. Any other cause the procurement manager determines to be so serious and compelling as to affect the responsibility as a contractor, including, but not limited to, debarment by another governmental entity for any cause listed in regulations; or
 - g. Violation of the ethical standards set forth in section 2-330.
 - h. Violation of requirements in section 2-320, Code of silence.
- (d) *Decision.* The procurement manager shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.
- (e) *Notice of decision.* A copy of the decision under subsection (d) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
- (f) *Appeal to the special magistrate.* The decision to debar is final unless, within ten (10) calendar days from the date of receipt of the decision, a notice of appeal is filed with the town attorney requesting a hearing before the town's special magistrate. A hearing before the town's special magistrate will be scheduled within thirty (30) days receipt of the notice of appeal. After hearing the matter, the special magistrate shall render a decision regarding suspension or debarment and decide whether, or to the extent to which, the debarment or suspension was in accordance with this section. The decision of the special magistrate shall be final and conclusive.
- (g) *Statute of limitations.* There is no statute of limitations regarding debarment. The procurement manager may debar parties whose contracts have ended.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-330. Ethics in public contracting.

(a) *Standards of ethical conduct.*

- (1) *Ethical standards for employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the town employee's or elected official's duties is a breach of a public trust.
- (2) *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 violation of this article.

(b) *Standards of conduct for employees, public officials and suppliers.*

- (1) *Failure to follow proper procurement procedures.* It shall be a violation of this section for any employee to order, contract for or purchase any materials, supplies or services except in strict compliance with all procurement procedures as provided herein or as established by administrative policy of the town.
- (2) *Acceptance of gifts.*
 - a. No elected official or relative, registered domestic partner, or governmental office staff of any elected official, shall accept any gift, directly or indirectly, with a value in excess of five dollars (\$5.00), from lobbyists registered with the governmental entity on whose behalf they (or their registered domestic partner or relative) serve, or from any principal or employer of any such registered lobbyist, or from vendors or contractors of such governmental entity. In order to effectuate this provision, no lobbyist shall engage in any lobbying activity prior to registering as a lobbyist with the applicable governmental entity. For purposes of this paragraph, neither Town of Davie, any municipality within Broward County, or any other governmental entity shall be considered a registered lobbyist, a principal or employer of a registered lobbyist, or a vendor or contractor of any governmental entity within Broward County.
 - b. Elected officials may accept gifts from other sources given to them in their official capacity, where not otherwise inconsistent with the provisions of Chapter 112, Part III, Florida Statutes, up to a maximum value of fifty dollars (\$50.00) per occurrence. Gifts given to an elected official in his or her official capacity up to fifty dollars (\$50.00) in value are deemed to be de minimis. A governmental entity giving a gift to its own elected official shall not be considered a gift from an "other source" for purposes of the fifty dollar (\$50.00) limitation.
 - c. The fifty dollar (\$50.00) limitation does not apply to gifts given to elected officials in their personal (nonofficial) capacity. Such gifts are still subject to the reporting requirements of Section 112.3148, Florida Statutes.
 - d. Notwithstanding the foregoing, to the extent not prohibited by Florida law and subject to the reporting requirements of Section 112.3148, Florida Statutes, nothing in this section shall prohibit elected officials from participating in any public service announcement.
 - e. When not otherwise permitted by this part (c)(1), "Acceptance of gifts," the following items may be accepted to the full extent permissible under state law:
 1. Items customarily given to express condolences or sympathy, such as flowers, food items, or cards, given to an elected official in connection with the death or significant injury or illness of the elected official or an immediate family member of the elected official;
 2. Training, including the payment or reimbursement of expenses incurred in connection therewith, provided the training relates to the elected official's public service. The receipt of such training is deemed to directly benefit the public on whose behalf the elected official serves;

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3. Nonalcoholic beverages; and
 4. Admission tickets to charitable events available to the public, provided that any elected official or governmental office staff of the elected official who receives such tickets shall:
 - (i) Within fifteen (15) days after receiving such tickets, files for public inspection a disclosure form stating the name of the donor, the value of the tickets received, and the date and location of the event; and
 - (ii) Within thirty (30) days after the event, reimburses the donor for the value of the food and beverages consumed by the person(s) using the tickets.
- (3) *Doing business with the town.* No town officer, agent, employee nor any elected public official acting in his or her official capacity shall directly or indirectly purchase, rent or lease any realty, goods or services for the town from any business entity of which the officer or employee or the officer's or employee's spouse, sibling or child is an officer, partner, director or proprietor or in which the official or employee or the officer's or employee's spouse, sibling or child, or any combination of them, has a material interest. No town official or employee, acting in a private capacity, shall rent, lease or sell any realty, goods or services to the town.
 - (4) *Unauthorized compensation.* No town officer, agent or employee or his or her spouse, sibling or child shall, at any time, accept any compensation, payment or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his or her official capacity.
 - (5) *Conflicting employment or contractual relationship.* No town officer, agent or employee through outside employment or contractual relationship shall have any financial interests in the profits of any contract, service or other work performed by the town; nor personally profit directly or indirectly from any contract, purchase, sale or service between the town and any person or company through a relationship with any business entity which is doing business with the town. This section, however, shall not be construed to prevent any officer, agent or employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge of the officer or employee's duties in his or her employment with the town.
 - (6) *Contingent fees.* No town official or employee shall be retained, or shall retain a person, to solicit or secure a town contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee.
 - (7) *Confidential information.* No town official or employee shall disclose or use any information not available to members of the general public and gained by reason of his official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.
 - (8) *Prohibition against lobbying.*
 - a. During the solicitation of any bid or proposal, any firm and its agents, officers or employees who intend to submit, or who have submitted, bids or proposals shall not lobby, either individually or collectively, any town council members, candidates for town council or any employee of the town. Contact should only be made through regularly scheduled town council meetings, or meetings scheduled through the procurement division for purposes of obtaining additional or clarifying information. Any action, including meals, invitations, gifts or gratuities by a submitting firm, its officers, agents, or employees shall be within the purview of this prohibition and shall result in the immediate disqualification of that firm from further consideration.
 - b. During a formal solicitation process, contact with personnel of the Town of Davie other than the procurement manager and/or designated representative regarding any such solicitation may be grounds for elimination from the selection process.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-331. Surplus tangible property.

- (a) *Determination that property is surplus.* At least once annually, each department shall review town inventory and make a determination of town property that should be classified as surplus; however, at any time during the fiscal year a department may identify property as being surplus.
- (b) *Disposition of surplus property.* The procurement manager shall have the responsibility to dispose of any town tangible property that exists on the official municipal inventory, that is obsolete, worn out, excess, scrapped, or not cost effective to repair.
 - (1) Using departments shall submit to the procurement manager or designee, at such time and on such forms that may be prescribed, reports showing stock of all supplies which are no longer used or which have become obsolete, worn out, excess, scrapped or that are not cost effective to repair. The using department may suggest a dollar value per item or per lot of items; however, such suggestion shall not constitute the minimum sale amount.
 - (2) The procurement manager shall have the authority to dispose of surplus property by the method or methods deemed to be most advantageous, convenient and economical to the town. Methods of disposal of surplus stock may include, but not be limited to the use of competitive sealed bids, public auction, including internet auctions, established markets, sales at posted prices, or trade-in for new equipment as may be prescribed for the individual situation.
 - (3) Property that has been declared surplus that has an estimated value of greater than five thousand dollars (\$5,000.00) shall be disposed of by authorization of the town administrator.
 - (4) Property which has been declared surplus may be donated to an outside governmental or non-profit agency at the discretion of the town administrator or designee. The town administrator or designee shall report any donations with an estimated market value of greater than five thousand dollars (\$5,000.00) to the town council at its next regularly scheduled meeting.
 - (5) Property which is in a wrecked, inoperative or partially dismantled condition, or which has deteriorated to the point that it has no apparent monetary value, or may pose a potential risk to the town if disposed of through a sale, may be discarded as trash in an environmentally acceptable method, upon receipt of written approval by the procurement manager.
 - (6) In the event that either the competitive sealed bid or public auction methods for disposal are used, notice of a proposed sale of property shall be publicly noticed by advertisement in a newspaper of general circulation within the town, or by electronic notice published on the Internet at least one (1) week prior to the scheduled sealed bid or auction. The property shall be available to prospective buyers for inspection in advance of the bid opening or auction.
 - (7) Competitive sales of surplus property shall be made to the highest responsive and responsible bidder.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-332. Surplus real property.

- (a) *General.* Upon the town council determination that continued ownership of any parcel of real estate is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the town, the town council shall authorize by resolution the sale or other disposition of such real estate. No sale or conveyance shall be deemed authorized except as provided in the authorizing resolution.

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- (b) *Appraisal required.* Prior to the sale or other disposition of any town-owned real property, an appraisal shall be obtained unless the town council finds that, due to exigent or other circumstances, an appraisal would not be in the best interest of the town. For platted, undeveloped residential property, a recent appraisal of comparable property located in the same vicinity of the subject property may be utilized to satisfy the appraisal requirement. For purposes of this section, a "recent" appraisal shall mean one that was prepared not more than twelve (12) months prior to the proposed date of sale or other disposition.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-333. Auditor selection procedures.

When selecting an auditor to conduct the annual financial audit required by Section 218.39, F.S and Section 6(f) of the Town Charter, the town shall follow the procedures set forth within Section 218.391, F.S., pursuant to Section 7(c) of the Town Charter.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Sec. 2-334. Unsolicited proposals.

- (a) *Purpose.* A public-private partnership is a contractual agreement between a local government and a private sector person or entity organized for the purpose of timely delivering services or facilities in a cost-effective manner that might not otherwise be possible using traditional sources of public procurement.

Through this contractual agreement, the assets and professional skills of each sector (public and private) are shared and leveraged to deliver a service or facility to be used by the general public.

- (b) *Definitions.* For purposes of this section, the words defined in Section 255.065(1), F.S., (entitled "Definitions") including, without limitation, "qualifying project" and "private entity" shall have the same meaning in this section.
- (c) *Conditions for use.* The procurement manager may receive unsolicited proposals for a qualifying project, subject to the conditions and procedures of this section. Any unsolicited proposal shall include sufficient detail and information for the town to evaluate the proposal in an objective and timely manner, and shall be accompanied by the application fee.
- (d) *Proposal contents.* Any unsolicited proposal shall include sufficient detail and information for the town to evaluate the proposal in an objective and timely manner and to determine if the proposal serves a public purpose and meets the criteria set forth in this section.
- (1) The following material and information is required to be submitted:
- a. A description of the project, including the conceptual design of the facility; or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
 - b. A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.
 - c. A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
 - d. The name and address of a person who may be contacted for additional information concerning the proposal.

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- e. The proposed user fees, lease payments or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments and other service payments over time.
 - f. Any pricing or financial terms included in the unsolicited proposal must be specific as to when the pricing or terms expire.
- (2) The following additional material and information must also be submitted in order for the town to review and evaluate the unsolicited proposal:
- a. Description of the need for the project or facility and the public benefit to be served.
 - b. A site plan indicating the location of the project propose.
 - c. 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 project.
 - d. 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.
 - e. Performance guarantees, if any, and any proposed bonding to be provided by the proposer, including ability to provide statutorily required public construction bonds or performance and payment bonds for construction of public facilities.
 - f. A listing of all proposed obligations and requirements of the town and any other governmental agencies, including, but not limited to, contributions to the project financing, development approvals and permitting.
 - g. Identification of whether the proposal involves turning over any operation, maintenance or other responsibilities to the town, along with an estimate of costs;
 - h. Statement regarding ability to add capacity to the project if necessary.
 - i. Proposed safeguards to protect the town from additional costs or service disruption in the event of default or termination of contract.
 - j. 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.
 - k. Information on how the project would benefit small business enterprises and local contractors within the town.
 - l. A list of all engineering or construction firms to be proposed on the project and their qualifications and a description of their role in the proposal and project.
 - m. Is signed by a responsible official or other representative authorized to obligate the proposer contractually.
- (e) *Application fee.* The town shall charge fees to the private entity proposer to cover the costs of processing, reviewing and evaluating any unsolicited proposal, including a fee to cover the costs of staff time, and attorneys, engineers, consultants and financial advisors retained to evaluate the proposal, advertise, provide recommendations to the town and/or negotiate a contract.
- (1) All unsolicited proposals shall be accompanied by an initial application fee of five thousand dollars (\$5,000.00) payable to the Town of Davie in the form of a money order or cashier's check or other non-cancelable instrument. Personal checks will not be accepted. Proposals submitted without the application fee shall not be accepted.

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- (2) The town shall refund the application fee if the town determines that it will not evaluate the unsolicited proposal.
- (f) *Council consideration.* If the town receives an unsolicited proposal for a qualifying project pursuant to this section and the town administrator deems it to be in the best interests of the town to further evaluate the proposal or negotiate an agreement based on the proposal, the town administrator shall notify the town council of the receipt of the unsolicited proposal by placement of an item on the next available town council agenda to obtain the town council's approval to proceed with the evaluation and negotiation of a project based on the unsolicited proposal.
- (g) *Town council decision to proceed with evaluation.* If the town council votes to proceed with the evaluation of an unsolicited proposal involving architecture, engineering or landscape architecture, it must ensure a professional review and evaluation of the design and construction proposed by the initial or subsequent proposers to assure material quality standards, interior space utilization, budget estimates, design and construction schedules and sustainable design and construction standards consistent with public projects. Such review shall be performed by an architect, a landscape architect or an engineer licensed by the State of Florida qualified to perform the review and such professional shall advise the town through completion of the design and construction of the project.
- (h) *Prior to review.* If the initial application fee does not cover the town's costs to evaluate the unsolicited proposal, the town shall request in writing the additional amounts required. The private entity must pay the requested additional amounts within thirty (30) days after receipt of the notice. The town may stop its review of the unsolicited proposal if the private entity fails to pay the additional amounts.
- (i) *Public notice.* If the town determines that it is interested in further considering any unsolicited proposal, it shall publish a notice of receipt of same and invite competing bids during a competitive bidding period. The publication shall be accomplished in a manner that encourages competition to provide private entities interested in submitting alternative and perhaps competing proposals to provide a reasonable opportunity to submit a bid. The entity submitting the original unsolicited proposal may submit a more detailed proposal in response to the town's notice. A copy of the notice must be mailed to each local government in the affected area of the qualifying project which shall mean Broward County and/or any special district in which all or a portion of the qualifying project is located.
- (j) *Receipt of proposals.* Sealed proposals in response to the public notice must be received in the procurement division no later than the time and date specified for submission in the publication. Sealed proposals shall be accompanied by the initial application fee.
- (k) *Evaluation.* The selection of a proposer with whom to negotiate shall be in accordance with the evaluation committee procedures set forth within section 2-321 of the procurement code.
- (l) *Evaluation criteria.* When performing an evaluation of any proposal under this section, the following factors, along with all of the information required to be provided in the proposal, shall be considered, in addition to any others appropriate for the particular proposal:
- (1) The proposal business terms, including the finance plans;
 - (2) Unique, innovative and meritorious methods, approaches, concepts, design techniques or cost reductions demonstrated by the proposal;
 - (3) Overall scientific, technical or socioeconomic merits of the proposal;
 - (4) The proposer's capabilities, related experience, facilities, techniques or unique combinations of these;
 - (5) The professional qualifications, capabilities and experience of the proposer's team or key personnel critical to achieving the proposal objectives;

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- (6) The general reputation and financial condition of the proposer and its team members; the proposed finance plan; the financial viability and feasibility of the proposed project or facility; and the cost, if any, to the town to proceed with implementation of the proposal, including on-going operational or maintenance costs. The town may require the proposer to provide a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies;
 - (7) Any other information the town deems appropriate for evaluation of the proposed project or facility.
- (m) *Rejection of proposals.* If an unsolicited proposal, or competing proposal received after public notice, is not deemed by the procurement manager to be complete or in sufficient detail, it may be rejected by the town. The town shall have no responsibility to itemize or advise the proposer of the incomplete items or terms of the proposal. The town shall refund any portion of the application fee paid which, in the determination of the procurement manager, exceeds the direct costs associated with evaluating the proposal up to the time of rejection. The town, in its discretion, reserves the right to reject all proposals at any point in the process prior to the full execution of a comprehensive agreement with a proposer.
- (n) *Comprehensive agreement.* The comprehensive agreement with the private entity shall contain at a minimum the terms and conditions set forth within Section 255.065(7), F.S. The comprehensive agreement may authorize the private entity to impose fees to members of the public for the use of the facility in accordance with the provisions set forth within Section 255.065(8), F.S. Before approving a comprehensive agreement, the town must determine that the proposed project:
- (1) Is in the best interest of the public.
 - (2) Is for a facility that is owned by the town or for a facility for which ownership will be conveyed to the town.
 - (3) Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the comprehensive agreement by the town.
 - (4) Has adequate safeguards in place to ensure that the town or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.
 - (5) Will be owned by the town upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed.

If the town enters into a comprehensive agreement for the project described in the unsolicited proposal, the town shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two (2) weeks stating the town has received a proposal and will accept other proposals for the same project. The timeframe within which the town may accept other proposals shall be determined by the town on a project by project basis based upon the complexity of the qualifying 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 other proposals must be at least twenty-one (21) days, but no more than one hundred twenty (120) days after the initial date of publication. If approved by a majority vote of the town council, the town may alter the timeframe for accepting proposals to more adequately suit the needs of the qualifying project. A copy of the notice must be mailed to each local government in the affected area.

- (o) *Public records.* Pursuant to Section 255.065(15), F.S.:
- (1) An unsolicited proposal received by a responsible public entity is exempt from Section 119.07(1), F.S. and Section 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project.
 - (2) If the town rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and the town concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the town provides notice of an intended decision

concerning the reissued competitive solicitation for the qualifying project or until the town withdraws the reissued competitive solicitation for such project.

- (3) An unsolicited proposal is exempt for no longer than ninety (90) days after the initial notice by the town rejecting all proposals.
- (4) If the town does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt one hundred eighty (180) days after receipt of the unsolicited proposal by the town.
- (5) Any portion of a meeting of the town during which an unsolicited proposal that is exempt is discussed is exempt from Section 286.011, F.S. and Section 24(b), Art. I of the State Constitution.
 - a. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.
 - b. The recording of, and any records generated during, the exempt meeting are exempt from Section 119.07(1), F.S. and Section 24(a), Art. I of the State Constitution until such time as the town provides notice of an intended decision for a qualifying project or one hundred eighty (180) days after receipt of the unsolicited proposal by the town if the town does not issue a competitive solicitation for the project.
 - c. If the town rejects all proposals and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records generated at the exempt meeting remain exempt from Section 119.07(1), F.S. and Section 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for such project.
 - d. A recording and any records generated during an exempt meeting are exempt for no longer than ninety (90) days after the initial notice by the town rejecting all proposals.

(Ord. No. O2021-020 , § 2(Exh. A), 8-4-21)

Secs. 2-335—2-349. Reserved.