Regular Workshop – May 19, 2014
Agenda Item 13

Agenda Item:	Chapter 38, Purchasing Procedures Update
Presenter:	Town Manager and Staff
Summary:	The Town Attorney's office and Town Staff are proposing changes to the Town Code Chapter 38, Purchasing Procedures. The changes center around the need for better definition and structure of the procedures.
Attachments:	5-12-14 Memo, David Jackson, Esq. to Commission Presentation, Proposed Purchasing Procedure Revisions Proposed changes to Chapter 38, Purchasing Procedures Strikethrough Underline (STUL) Version Proposed changes to Chapter 38, Purchasing Procedures Clean Version
Recommended Action:	Pending discussion, provide direction to Town Manager.

MEMORANDUM

DATE: 5/12/2014

TO: Town Commission

FROM: R. David Jackson, Esq.

THROUGH: Dave Bullock, Town Manager; Anne Ross, Assistant Town Manager

SUBJECT: Summary of Proposed Revisions to Town Purchasing Code

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The following is a list of proposed revisions to the Town's Purchasing Procedures, Chapter 38 of the Town of Longboat Key Code of Ordinances. Minor changes, including, but not limited to, renumbering and reorganization of various sections, have been omitted from this list. A "redlined" version of the current purchasing provisions showing the proposed revisions with additions underlined and deletions shown in strikethrough, as well as a "clean" version of the proposed Chapter 38 have also been provided.

Proposed Revisions:

- Addition of a "Definitions" section (38.02);
- Addition of a "Waiver of provisions" section (38.03), giving the Town Commission the authority to waive any provision of Chapter 38 via resolution;
- Removal of exception for head of finance department to be delegated purchasing authority that may be delegated to other department heads (38.12);
- Addition of section regarding "Procedure for securing quotes and bids" (38.18) to codify procedures used under purchasing manual;
- Addition of section (38.19) regarding bidder qualifications and option to pre-qualify general contractors for projects;
- Addition of section (38.20) regarding requirements related to bid and contract security;
- Revision and clarification of procedures under "Competitive sealed bidding" section (38.22) including bid evaluation, award, rejection, and resolution of tie bids;
- Revision and clarification of procedures under "Competitive sealed proposal process" section (38.23) including proposal submission, evaluation, award, and rejection;
- Addition of "Contracting for designated professional services" section (38.26) to revise and clarify procedures for retaining various professional services;

- Addition of "Procedures for award of design-build contracts" section (38.27) in accordance with Florida Statutes, further adopting rules of Florida Department of Management Services for state agencies;
- Addition of stated purpose under "Suspension and debarment" section (38.31);
- Revision of "Protest procedure" section (38.32) and codification of certain procedures used under purchasing manual; and
- Revision of "Purchasing manual changes" section (38.38) to provide that revisions to purchasing manual shall be consistent with code and that discrepancies between manual and code shall be resolved in favor of the code.

TOWN OF LONGBOAT KEY

PROPOSED
PURCHASING PROCEDURE REVISIONS

TOWN COMMISSION WORKSHOP
MAY 19, 2014

TOWN CODE CHAPTER 38
PURCHASING

- Establishes Fair and Equitable Purchasing Procedures
- Maximizes Purchasing Value of Public Funds

TOWN CODE CHAPTER 38
MAJOR REVISIONS SUMMARY

- Addition of a "Definitions" section
- Addition of Town Commission waiver via resolution
- Addition of section regarding "Procedure for securing quotes and bids" to codify procedures used under purchasing manual
- Addition of bidder qualifications and option to pre-qualify general contractors

TOWN CODE CHAPTER 38
MAJOR REVISIONS SUMMARY, CONT.

- Addition of section regarding requirements related to bid and contract security
- Revised and clarified procedures under Competitive sealed bidding and proposals

TOWN CODE CHAPTER 38
MAJOR REVISIONS SUMMARY, CONT.

- Addition of "Contracting for designated professional services" to revise and clarify procedures for retaining various professional services;
- Addition of "Procedures for award of design-build contracts" section in accordance with Florida Statutes and rules of Florida Department of Management Services for state agencies

TOWN CODE CHAPTER 38
MAJOR REVISIONS SUMMARY, CONT.

- Addition of stated purpose under "Suspension and debarment" section
- Revise "Protest procedure" section and codify certain procedures used under purchasing manual
- Revise "Purchasing manual changes" section to provide consistency between the code and purchasing manual

CHAPTER 38 - PURCHASING ~~DIVISION~~PROCEDURES

GENERAL PROVISIONS

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GENERAL PROVISIONS

38.01 Purpose.

The purpose of this chapter is the establishment of a centralized purchasing procedure in order to provide for the fair and equitable treatment of all persons involved in public purchasing by the town, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

(References are to Model Procurement Code.) (Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 3, 8-10-11)

38.02 Definitions.

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

Departments means the departments and agencies of the town, including but not limited to the Police Department, Planning, Zoning, & Building Department, Fire Department, Public Works Department, IT Department, and Finance Department.

Evaluation criteria means the bases upon which the town will rely to determine acceptability of a bid or proposal, as stated in the bid, the proposal, or this chapter, including, but not limited to, inspection, testing, quality, workmanship, delivery, price, 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.

Lowest and best bid/price means the apparent lowest bidder or proposer whose bid or proposal best meets the needs of the Town as stated in the invitation to bid, the request for proposal, or this chapter.

Public notice means the required notification or advertisement of an invitation to bid, request for proposal, or other competitive solicitation provided for in this chapter, to be given to prospective vendors for a reasonable period of time as determined by the financial specialist, which shall, at a minimum, include posting public notice on the Town's website and a notice in a newspaper of general circulation when required by applicable law. The public notice shall describe the goods or services sought, and state the date, time and place of the bid/proposal/solicitation opening.

Purchase/procurement means the acquisition of goods and/or services.

Responsible bidder means a bidder who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance.

Responsible proposer means a proposer who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance.

Responsive bid means a bid submitted by a responsive and responsible bidder which conforms in all material respects to the invitation for bids.

Responsive bidder means a bidder who has submitted a bid which conforms in all material respects to the invitation for bids.

Responsive proposal means a proposal submitted by a responsive and responsible proposer which conforms in all material respects to the request for proposal.

Responsive proposer means a proposer who has submitted a proposal which at a minimum conforms in all material respects to the request for proposal.

Town means the town commission and the departments of the town.

(Ord. No. 2014- , passed - -14)

38.03 Waiver of provisions.

The town commission may waive any provision of this chapter by resolution.

(Ord. No. 2014- , passed - -14)

GENERAL PROVISIONS

38.10 Reserved.

38.11 Authority of the financial specialist.

(A) Article III, § 4, subparagraph (i) of the Charter of the Town of Longboat Key ("Town Charter") provides that the town manager shall serve as purchasing agent for the town. To assist the town manager with these ~~him in his~~ duties, the town manager hereby designates the financial specialist as the principal purchasing official for the ~~Town~~ town~~of Longboat Key~~. The financial specialist shall report to the finance director.

(B) The town manager hereby designates the financial specialist the authority to advise the town manager concerning all rights, powers, and authority related to the procurement and contracting of goods and services as provided by the Town Charter.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 5, 8-10-11)(Ord. No. 2014- , passed - -14)

38.12 Delegation of authority by the town manager.

The town manager may further delegate rights, powers, and authority vested in the financial specialist to a designated department head, ~~except the finance director,~~ when deemed necessary, provided such department head shall comply with all requirements of this chapter and any other applicable law.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 6, 8-10-11)~~(Ord. No. 2014- , passed - -14)~~

38.13 Duties of the financial specialist.

The authority of the financial specialist is governed by the ordinance codified in this chapter together with the policies and procedures manual promulgated by the town manager, all of which must be in accordance with the provisions of the Town Charter and other applicable laws.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 7, 8-10-11)

38.14 Encumbrance of funds.

(A) The town manager shall not award any contract, issue any order for delivery on a contract, or make any open market purchase, until the financial specialist obtains written or electronic approval from the finance department that there is a sufficient unencumbered appropriation balance to defray the amount of such order, pursuant to article V, § 9, of the ~~Longboat Key~~Town Charter.

(B) Any purchase that would exceed the amount budgeted by less than $10,000.00 for that item or service, and where sufficient unencumbered appropriations remain within the department, office, or agency, requires the town manager's authorization pursuant to article V, § 9(d), of the ~~Longboat Key~~Town Charter.

(C) Any purchase that would exceed the amount budgeted by $10,000.00 or more for that item or service, and where sufficient unencumbered appropriations remain within a department, office, or agency, may be authorized by the town commission upon a written request by the town manager to transfer funds, pursuant to article V, § 9(d) of the ~~Longboat Key~~Town Charter.

(D) Any purchase that would exceed the amount budgeted by $10,000.00 or more for that item or service, where there is insufficient unencumbered funds within that department, office or agency but there is sufficient unencumbered funds within another department, office, or agency, may be authorized by resolution by the town commission

upon a written request by the town manager to transfer funds, pursuant to article V, § 9(d) of the ~~Longboat Key~~Town Charter.

(E) Any purchase that would exceed the amount budgeted for that item or service and where there is insufficient unencumbered funds within a department, office, or agency, shall require supplemental appropriations in accordance with article V, § 9 of the ~~Longboat Key~~Town Charter.

(F) Approval by the town manager is required for all purchases. In addition thereto, the town commission may reserve its authority to approve or deny purchases, in whole or in part, at any time.

(G) All purchases in excess of $3,000.00, unless emergency in nature, shall be processed through the finance department and in accordance with the provisions of this chapter. Any purchase or contract made contrary to the provisions hereof shall not be binding on the town unless approved by the town manager or town commission or in accordance with the Town Charter and Code of Ordinances.

(Ord. 03-03, passed 3-3-03: Ord. 07-08, passed 4-9-07)
(Ord. No. 2011-27, § 8, 8-10-11)(Ord. No. 2014- , - -14)

38.15 Department head purchasing authority.

A department head, with prior approval of the town manager, may make or authorize others to make procurements of supplies, services or construction items in amounts ~~of~~ less than $3,000.00 ~~or less~~ per vendor, on a routine basis to maintain work flow and services. If the vendor is under contract with the town, the purchase shall be from that vendor, unless extenuating circumstances exist which make it impractical or undesirable to purchase from that vendor. For purchases ~~of~~ less than $3,000.00 ~~or less~~, there shall be no need to obtain quotations. The purchases are to be reviewed quarterly by the financial specialist and the finance department for adherence to competitive and fair purchasing practices.

(Ord. 03-03, passed 3-3-03: Ord. 07-08, passed 4-9-07)
(Ord. No. 2011-27, § 9, 8-10-11)

38.16 Public access to procurement information.

Procurement information shall be a public record to the extent provided for by applicable Florida law and all town records ~~by~~ generated pursuant to this ~~Code~~ chapter ~~and~~ shall be available to the public as provided for therein.

(1-401)(Ord. 03-03, passed 3-3-03)(Ord. No. 2014- , - -14)

PURCHASING PROCEDURES

38.20 17 Application and exclusions.

The provisions of this chapter shall apply to every purchase or procurement of goods, supplies, equipment, or materials, or services, or the letting of any contract for the working of any road or street or related to any construction of any buildingproject by the town and, the departments, and the advisory boards, which are under the control of the town commission;. This chapter shall apply to every expenditure of public funds by the town for public purchasing irrespective of their fund source, including state and federal assistance monies, except as otherwise specified by law. They provisions of this chapter shall not apply to:

(A) Agreements between the town and nonprofit organizations or governmental entities including the procurement, transfer, sale or exchange of goods and/or services.

(B) Procurement of dues and memberships in trade or professional organizations; subscriptions for periodicals; advertisements; postage; expert witnesses; abstracts of titles for real property; title insurance for real property; court reporter services; water, sewer, and electrical utility services; copyrighted materials; patented materials; and fees and costs of job-related seminars and training.

(C) Goods and/or services given or accepted by the town via grant, gift or bequest.

(D) Any state contract; any contract which has been let to the lowest qualified and responsible bidder pursuant to competitive sealed bids or request for proposal by any county, municipality, school board, other units of local government, the Florida Sheriff's Association, or the Florida Association of Counties and any governmental cooperative or alliance (where an alliance is a group of local governments banded together to achieve economies in contracting prices for the acquisition of certain goods, services, supplies, equipment or materials).

(E) Professional consulting services where the selection process conforms to state law.

(F) Items purchased for resale to the general public.

(G) Purchases from private cooperative groups or organizations or a federal general services contract when the best interests of the town would be served thereby, provided the finance department has attempted to obtain three written or verbal quotations and

those quotations confirm that the contract price is lower than the price available from vendors who are not a party to said contract.

(H) Wrecked town vehicles, which have been appraised or designated by the town's appraiser for repair.

(I) Emergency vehicle repairs.

(J) Any purchase from a local vendor whose principal place of business is in Manatee or Sarasota County and whose price, terms, and conditions for the item to be purchased is the same as or lower than a competitively bid state of Florida, county, municipality, school board, other unit of local government, Florida Sheriff's Association, Florida Association of Counties, governmental cooperative, or governmental alliance contract.

(Ord. 03-03, passed 3-3-03: Ord. 07-08, passed 4-9-07)
(Ord. No. 2011-27, § 11, 8-10-11)(Ord. No. 2014- , passed - -14)

38.18 Procedure for securing quotes and bids.

(A) Prices for purchases between $3,000.00 and $10,000.00 shall be submitted in writing from the vendor or firm submitting the quotation. Purchases estimated to cost between $10,000.01 and $34,999.99 will be written and submitted by the vendor or firm quoting. Where oral quotations are received, rather than written quotations, documentation of reasons for infeasibility of written quotations shall be noted and authorized by the financial specialist prior to the purchase. Every effort will be made to obtain a minimum of three (3) or more quotations for purchases estimated between $3,000.00 and $10,000.00. Every effort will be made to obtain a minimum of six (6) or more quotations for purchases estimated between $10,000.01 and $34,999.99 for goods, supplies, material and equipment; and $10,000.01 to $100,000.00 for public works projects. Any purchase that is anticipated to exceed $35,000.00, except as allowed for public works projects, shall be posted on an electronic notification service.

(B) Written requests for quotations will be mailed, e-mailed, or faxed to prospective bidders, as feasible, and such requests for quotations shall indicate the deadline for receipt of the quote. No quote will be considered if received after the deadline for receipt. Sole Source purchases, Emergency Purchases, and other purchases identified as excluded in this chapter are exempted with the prior approval of the financial specialist. Completely documented requests for quotations shall be maintained in the finance department.

(C) The user department, if authorized by the financial specialist, may obtain quotations from vendors independent of the finance department provided the quotations are authorized by the financial specialist and the quotations include the names of the vendors solicited, telephone numbers, contact names, and a written response attached from each vendor (quotations from vendors under contract with the town shall be used, if available) on a completed quotation form. The quotations and form shall be submitted to the finance department for review and award. Quotations may be verified and additional quotations may be obtained at the discretion of the financial specialist.

(~~C~~D) *Direct negotiation procurement.* If, due to time constraints or other circumstances, solicitation or resolicitation ~~for~~of bids or proposals is not in the best interest of the town, the town manager may authorize direct negotiation for the procurement of goods, services or construction, and waive any or all requirements set forth in this chapter that might otherwise apply to the procurement. Negotiations shall be by means ~~promulgated in the purchasing manual~~set forth in this chapter.

(Ord. No. 14- , - -14)

38.19 Bidder qualifications.

(A) In determining the responsible and responsive bidder who submits the lowest and best bid, in addition to price, the town manager or his/her designee, shall consider, at a minimum:

1. The ability, capacity and skill of the bidder to perform the contract or provide the service required;

2. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

4. The quality of performance of previous contracts or services;

5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;

6. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

7. The quality, availability and adaptability of the goods or services to the particular use required;

8. The ability of the bidder to provide future maintenance and service;

9. The number and scope of conditions attached to the bid.

(B) *Prequalification of general contractors.* General contractors wishing to bid on the town's construction projects in excess of $100,000.00 may be required to be prequalified with the town manager or his/her designee prior to bid opening. Types of construction that may require prequalification include, but are not limited to, road and street, building, water and sewer, marine, bridge, and well drilling. The primary criteria considered in determining qualification are financial capability and previous job experience and performance.

1. Prequalification is recommended to the town manager or his/her designee for final approval by a prequalification committee.

2. Prequalification is not a conclusive determination of responsibility, and a prequalified bidder may be rejected as non-responsible on the basis of subsequently discovered information.

(Ord. No. 2014- , passed - -14)

38.20 Bid and contract security.

(A) Bid security.

(1) *Requirement for bid security.* Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated to exceed $100,000.00. Bid security shall be in a form satisfactory to the town attorney. Nothing herein shall prevent the requirement of such security on other contracts when the circumstances warrant.

(2) *Amount of bid security.* Bid security for all other competitive sealed bids and proposals shall be in an amount equal to at least five percent of the amount of the bid, unless the financial specialist determines that the nature of the project is such that the bid security requirement would work a hardship on most potential bidders or otherwise deemed to be impractical or unnecessary.

(3) *Rejection of bids for noncompliance with bid security requirements.* When the invitation for bids requires bid security, a bid shall be rejected in the event of

noncompliance unless it is determined that the bid fails to comply only in a nonsubstantial manner with the security requirements.

(B) *Contract security.* When a construction contract is awarded in excess of $100,000.00, security, as described below, shall be provided in conformance with the minimum requirements of F.S. § 255.05, and shall become binding upon the execution of the contract.

(1) A performance bond satisfactory to the town attorney, executed by a surety insurer authorized to do business in the state of Florida as a surety, in an amount equal to 100 percent of the price specified in the contract, conditioned that the contractor perform the contract in the time and manner prescribed in the contract; and

(2) A payment bond satisfactory to the town attorney, executed by a surety insurer authorized to do business in the state of Florida as a surety, in an amount equal to 100 percent of the price specified in the contract, conditioned that the contractor promptly make payments to all persons supplying labor, materials or supplies used directly or indirectly in the performance of the work provided for in the contract, and who are claimants as defined in F.S. § 255.05(1).

(C) *Authority to require additional security.* Nothing in this section shall be construed to limit the authority of the town to require a performance bond or other security in addition to those bonds, or in circumstances other than, as specified in subsection (B) of this section.

(Ord. No. 2014- , - -14)

38.21 Source selection.

(A) The procurement of goods, services, materials, supplies and equipment, by or on behalf of the town, including those transactions through which the town shall receive revenue, in an amount equal to or in excess of $35,000.00, shall be awarded by a competitive bid or competitive proposal process as specifically provided herein, except as otherwise provided herein, or by state or federal law. Competitive sealed bidding shall be the preferred method of competition where possible.

(B) Any purchase for an amount less than $35,000.00, except as provided in section 38.15, or contract for the working of any capital improvement and repair projects in an amount less than $100,000.00 may be made in accordance with those procedures

promulgated in ~~the purchasing manual~~ subsection 38.18(A); provided, however, no purchase shall be artificially divided so as to constitute a purchase under this section.

(C) Nothing in the foregoing shall prohibit the town from renewing purchase orders or contracts provided the vendor was originally selected through a competitive selection process, and further provided such renewal is within the scope of the original purchase order or contract.

(Ord. 03-03, passed 3-3-03: Ord. 07-08, passed 4-9-07)
(Ord. No. 2011-27, § 12, 8-10-11)(Ord. No. 2014- , - -14)

38.22 Competitive sealed bidding.

(A) *Invitation for bids.* An invitation for bids shall be issued which shall include the specifications and all contractual terms and conditions applicable to the procurement.

(B) *Public notice.* Public notice of the invitation for bids shall be published in a newspaper of general circulation in Sarasota or Manatee County once for a period not less than 14 days prior to bid receiving date or for a period as required by F.S. ch. 287 for public works projects. A bid invitation shall be ~~mailed or electronically sent to all parties on the applicable vendor bidders list~~made available to vendors through an electronic notification service. The public notice shall identify the item being bid and state the place, date, and time of bid opening.

(C) *Bidders list.* Bids shall be invited from all responsible prospective vendors through an electronic notification service or such other notice as will acquaint them with the proposed purchase. Vendor invitations to bid shall be limited to goods and services that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

(~~C~~D) *Bid submission.* Bids must be received no later than the time and date and at the location specified for the bid opening in the invitation for bids. No bids shall be accepted after such time and date or at any ~~other~~ location other than what is specified in the invitation for bids; any bids received later or at any other location than specified shall be returned to the bidder. It shall be the bidder's sole responsibility to ensure that ~~their~~ its bid reaches the specified ~~time and~~ place for receipt of bids by the specified time. Bidders shall be allowed to withdraw their bids at any time prior to bid opening.

(~~D~~E) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place specified in the invitation for bids. The name of each bidder shall be announced and recorded at the public opening as indicated in the ~~bid~~

invitation for bids or accepted and announced at a later time as allowed by F.S. ch. 119. Bids will be made public in accordance with the provisions of F.S. ch. 119.

(E) *Bid cancellation or postponement.* The financial specialist may, prior to bid opening, elect to cancel an invitation for bids or postpone the date and/or time of bid submission or opening.

(F) *Corrections, additions to, and withdrawal.* The financial specialist shall promulgate and adopt policies regarding corrections, additions to, and withdrawal of bids.

(G) *Bid receipt and bid evaluation.* Bids shall be received without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the criteria set forth in the invitation for bids. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. ~~The town manager reserves the right to accept or reject any and all bids, to make award to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bid and whose award will in the opinion of the town manager, be in the best interest and most advantageous to the town.~~

(H) *Bid award.* The town manager shall make award to the responsive and responsible bidder whose bid is determined to be the lowest and best bid that meets the requirements and criteria set forth in the invitation for bids and whose award will, in the opinion of the town manager, be in the best interest and most advantageous to the town. Awards shall be effective upon issuance of a purchase order, or written notice of award by the town manager. ~~The town manager may reject any bid prior to such issuance.~~ In the event only one responsive bid is received, the town manager may award to the sole bidder or rebid. ~~All bids to be awarded, which were approved in the current budget and have not received a protest during the award period may be awarded by the town manager.~~ Awards shall subsequently be posted at the town hall public bulletin board. Bids ~~or proposals~~ with contracts will be approved for execution by the town manager, or any official authorized by the town manager, when the bid awards period has been completed.

(I) *Rejection of bids.* The town manager reserves the right to accept or reject any and all bids or parts of bids at any time when the public interest will be served thereby.

(J) *Multi-step sealed bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, or information relating to the experience and capabilities of the prospective bidders, to be followed by an invitation for

bids limited to those bidders whose offers or experience and capabilities have been determined to be acceptable under the criteria set forth in the first solicitation.

(K) *Tie bids.* If two or more bids received are for the same total amount or unit price, or in the case of proposals, the qualifications, quality and service are equal, the contract shall be awarded to the local bidder/proposer. A local firm is defined as a firm with headquarters in geographical Manatee or Sarasota County. Headquarters shall mean the office location that serves as the administrative center and principal place of business. If two or more bids received are for the same total amount or unit price or in the case of proposals, the qualifications, quality and service are equal and no firms are deemed local, then the contract shall be awarded by drawing lots in public.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 13, 8-10-11)(Ord. No. 2014- , - -14)

38.23 Competitive sealed proposal process.

When it is determined and documented in writing by the using department and the financial specialist that the use of competitive sealed bidding is either not practical or not advantageous to the town, due to the technical or specialized nature of the goods or services sought, the financial specialist may authorize the following competitive sealed proposal processes as an alternative to the competitive sealed bidding process:

(A) *Requests for proposals, request for qualifications, or request for information.* Such requests, setting forth the terms and conditions of the goods or services sought including evaluation factors, shall be ~~issued in accordance with the purchasing manual~~ solicited through a request for proposals (RFP), request for qualifications (RFQ), or request for information (RFI) and public notice of the RFP/RFQ/RFI shall be given. The RFP/RFQ/RFI shall state the evaluation factors, which may include, but not be limited to, price, vendor approach and methodology, capability, and experience.

(B) *Proposal submission.* Proposals must be received no later than the time and date and at the location specified for the proposal opening in the RFP/RFQ/RFI. No proposals shall be accepted after such time and date or at any location other than what is specified in the RFP/RFQ/RFI; any proposals received later or at any other location than specified shall be returned to the proposer. It shall be the proposer's sole responsibility to ensure that its proposal reaches the specified place for receipt of proposals by the specified time. Proposers shall be allowed to withdraw their proposals at any time prior to proposal opening.

(C) *Proposal opening.* Proposals shall be opened publicly in the presence of one or more witnesses at the time and place specified in the RFP/RFQ/RFI. The name of each

proposer shall be announced and recorded at the public opening as indicated in the RFP/RFQ/RFI, or accepted and announced at a later time as allowed by F.S. ch. 119. Proposals will be made public in accordance with the provisions of F.S. ch. 119.

(D) *RFP/RFQ/RFI cancellation or postponement.* The financial specialist may, prior to proposal opening, elect to cancel an RFP/RFQ/RFI, or postpone the date and/or time of proposal submission or opening.

(E) *Corrections, additions to, and withdrawal.* The financial specialist shall promulgate and adopt policies regarding corrections, additions to, and withdrawal of proposals.

(F) *Proposal receipt and proposal evaluation.* Proposals shall be received without alteration or correction, except as authorized in this chapter. Proposals shall be evaluated based on the criteria set forth in the RFP/RFQ/RFI. No criteria may be used in proposal evaluations that are not set forth in the RFP/RFQ/RFI.

(G) *Discussion with responsible and responsive proposers.* Discussions may be conducted with responsible and responsive proposers who submit proposals for the purpose of clarification to assure full understanding of the solicitation requirements. Proposers shall be accorded fair and equal treatment and notice with respect to any opportunity for discussion and correction of proposals and such corrections may be permitted prior to award. In conducting discussions, there shall be no exchange of information regarding the content or feasibility of the proposals by competing ~~offeror~~proposers.

(~~B~~H) *Proposal ~~review~~evaluation and award.* Award by the town manager shall be made to the most responsive, responsible ~~offeror~~ proposer whose proposal is determined to be in the best interest and the most advantageous to the town in accordance with the evaluation criteria contained in the ~~request for proposal (~~RFP~~)~~ or to the most qualified firm in the case of a ~~request for information (~~RFQ or RFI~~)~~. Evaluation of ~~offerors~~ proposers and/or proposals may be made in a multi-step selection or bidding process as set forth in the RFP/RFQ/RFI and shall be based upon factors of responsiveness and quality based upon criteria set forth in the RFP/RFQ/RFI. The RFP/RFQ/RFI shall state the relative importance of price and ~~or~~ other criteria. Awards shall be effective upon written notice of award by the town manager. In the event only one responsive proposal is received, the town manager may award to the sole proposer or reissue the RFP/RFQ/RFI. Awards shall subsequently be posted at the town hall public bulletin board. Proposals with contracts will be approved for execution by the town manager, or any official authorized by the town manager, when the proposal awards period has been completed.~~As provided in the RFP, discussions may be conducted with responsible offerors who submit proposals for the purpose of clarification to assure full~~

~~understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no exchange of information regarding the content or feasibility of the proposals by competing offerors.~~

(I) *Rejection of proposals.* The town manager reserves the right to accept or reject any and all proposals or parts of proposals at any time when the public interest will be served thereby.

~~(C) *Award.* Notice of the intent to award shall be posted at the location set for proposal submission. The award shall be made in accordance with the provisions of subsection38.22(H). The contract file shall contain the basis on which the award is made.~~

(Ord. 03-03, passed 3-3-03)

(Ord. No. 2011-27, § 14, 8-10-11)(Ord. No. 2014- , - -14)

38.24 ~~Alternative source selection~~Sole source purchases.

~~Any purchase for an amount less than $35,000.00, except as provided in section 38.15, or contract for the working of any capital improvement and repair projects in an amount less than $100,000.00 may be made in accordance with those procedures promulgated in the purchasing manual~~section 38.18 of this chapter~~; provided, however, no purchase shall be artificially divided so as to constitute a purchase under this section.~~

~~(A) *Sole source purchases.*~~ A sole source purchase exists when research has determined there is only one potential provider for an item. The town manager may make or authorize the purchase~~, under the purchasing manual,~~ of goods, services, supplies, equipment and material without competitive bidding when the financial specialist recommends and the department director of the using department has documented in writing that such goods, supplies, equipment, material or services, are the only source that will meet the departmental needs and are available through only one practicable and reasonable source of supply. Such written determination shall be retained in the appropriate official contract file of the finance department.

(Ord. No. 2014- , - -14)

38.25 Emergency purchases.

~~(B) *Emergency purchases.*~~ Notwithstanding any other provisions of this chapter, ~~The~~ the town manager may make or authorize emergency purchases ~~in accordance with the purchasing manual~~ of goods or services that would not be possible, practicable, or

reasonable through normal purchasing procedures. Written records of emergency purchases shall be maintained by the finance department. For purposes of this chapter, "emergency purchases" means a procurement made in response to a requirement when the delay incident, to comply with all governing rules, regulations, and procedures would be detrimental to the health, safety or welfare of the town and/or its citizens, or otherwise result in the disruption of essential town operations.

(Ord. No. 2014- , - -14)

38.26 Contracting for designated professional services.

(~~C~~A) *Consultant services.* Subject to the requirements of F.S. § 287.055, professional and consultant services may be procured by either the competitive sealed proposal process ~~or~~, a ~~request for proposal (~~RFP~~)~~ or ~~request for information (~~RFI~~)~~, or as otherwise provided under this chapter. ~~The purchasing manual shall set forth the process for soliciting a RFP or RFI.~~ However, professional and consultant services, other than those services identified in F.S. § 287.055, need not be secured by a competitive proposal, RFP, or RFI process when the cost of such professional and consultant services is less than $35,000.00 and where a written finding has been jointly made by the department head, financial specialist, and the town manager outlining that the purchase of such professional and consultant services, without the competitive proposal, RFP, or RFI process, is in the best interest of the town.

(B) *Consultants' Competitive Negotiation Act.* Contracts for construction management services, as defined in F.S. § 255.103, as well as architectural, professional engineering, landscape architectural, and registered land surveying and mapping services shall be procured in accordance with the provisions provided under F.S. § 287.055, referred to as the Consultants Competitive Negotiation Act (CCNA). All contracts for such services shall be procured under the supervision of the financial specialist, finance department, and town manager.

(C) *Design-build contracts* . Design-build contracts, as defined in the CCNA, shall be procured in accordance with the provisions of the CCNA and the rules for the award of design-build contracts established by the State of Florida's Department of Management Services to be followed by state agencies, as provided for under section 38.27.

~~(D) *Professional, architectural, engineering, landscape architectural or land surveying services governed by F.S. § 287.055.* The procurement of professional services, as governed by F.S. § 287.055, shall be made in accordance with the purchasing manual.~~

~~Such procedures shall define and provide for the use of continuing professional service contracts and authorization of tasks with continuing contracts.~~

~~(E) *Design-build services.* The procurement of design-build services shall be made in accordance with rules and procedures promulgated in the purchasing manual.~~

~~(F) *Construction services.* The procurement of public works projects, shall be acquired in accordance with sections 38.22 or 38.23 herein. Bid security shall be required for all competitive sealed bidding for construction contracts, including road construction, when the price is estimated by the financial specialist to exceed $100,000.00. Bid security shall be an original bid bond executed by a surety company authorized to do business in the State of Florida, or a certified or cashier's check satisfactory to the town. Nothing herein shall prevent the requirement of such bonds on construction contracts under $100,000.00 when the circumstances warrant. A bid security shall be in an amount equal to at least five percent of the amount of the bid. Bids or proposals, which do not comply with the surety requirements, shall be rejected. When a public works project is awarded in excess of $100,000.00, the following bonds or security shall be delivered to the town and shall become binding on the parties upon execution of the contract:~~

> ~~(1) A performance bond satisfactory to the town executed by a surety company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to the town, in an amount equal to 100 percent of the price specified in the contract; and~~
>
> ~~(2) A payment bond satisfactory to the town executed by a surety company authorized to do business in the State of Florida or otherwise secured in a manner satisfactory to the town, for the protection of all persons supplying labor and material to the contractor or as subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100 percent of the price specified in the contract. Sureties for all bid bonds, performance bonds and payment bonds must be listed on the U.S. Department of Treasury Listing and authorized to do business in the State of Florida. The bond amount shall not exceed the maximum amounts specified therein, unless otherwise stipulated in the invitation for bid.~~
>
> ~~(3) Nothing herein shall prohibit the town, in an effort to benefit from the town's tax exempt status, from deleting line items within the invitation for bid and purchasing said items directly from a supplier, without further bidding, in an amount not exceeding the bid amount per line item of the successful bidder.~~

(D) *Continuing contract.* The town is authorized to enter into a continuing contract for CCNA services, whereby the firm provides professional services to the town for projects

in which construction costs do not exceed $2,000,000.00, for study activity if the fee for each individual study under the contract does not exceed $200,000.00; or for work of a specified nature as outlined in the contract required by the town, with the contract being for a fixed term or no time limitation, except that the contract must provide a termination clause.

(E) *Evaluator pool.* The financial specialist, with assistance from the user department, shall be responsible for developing and maintaining a pool of qualified evaluators to participate in CCNA evaluation committees, consisting of, but not limited to, representatives from town departments, professional organizations, and internal and external subject matter experts.

(F) *Evaluation committee.* Under a CCNA procurement, an evaluation committee shall consist of at least three, but typically not more than seven members (unless deemed to be in the best interest of the town) selected based upon their expertise and/or association with the project. The evaluation committee must consist of at least one person from the requesting department. The requesting department cannot have majority representation on the evaluation committee. The evaluation committee may also include non-requesting department representatives, internal/external subject matter experts, and local professional organization representatives (if deemed appropriate or necessary). Final composition and qualifications of evaluation committees shall be subject to approval of the town manager.

(G) *Ranking of firms.* The town, through the competitive proposal process, shall make a finding that the firm or individual to be employed is duly qualified to render the required service. The evaluation committee shall review statements of qualifications and performance data submitted in response to the public solicitation and shall select, in order of preference, no fewer than three firms deemed to be the most highly qualified, if at least three firms respond to the solicitation. If less than three firms respond, and after meeting due diligence, it is decided by the financial specialist that every effort was made to comply with the requirements of this chapter, the town will interview all respondents and proceed with the evaluation process. The evaluation committee may conduct public presentations with a minimum of three firms (if three firms submitted).

(H) *Evaluation criteria.* The evaluation criteria for ranking shall include, at a minimum: ability of firm and its professional personnel; firm experience with projects of a similar size and type; firm's willingness and ability to meet the schedule and budget requirements; volume of work previously awarded by the town; effect of the firms recent/current and projected workload; location; past performance; and, when required, the public presentation. For continuing contracts, ranking and award shall be based on the criteria as stated above. For non-continuing contracts or project specific contracts,

public presentation may be required. That requirement shall be stated in the RFP document.

(I) *Public presentations.* The evaluation criteria for public presentations shall include, but not be limited to, the firm's understanding of the project, ability to provide required services within the schedule and budget, qualifications, and approach to the project.

(J) *Contract negotiations.* The town manager shall negotiate a contract with the most qualified firm (number one ranked firm) for professional services for compensation which is deemed to be fair and reasonable. Detailed discussions must be held by the firm and the town to establish the scope of the project and the exact services to be performed by the firm. Should the town and the firm fail to agree upon the terms of an acceptable contract, negotiations with the top firm shall be terminated and negotiations with the second ranked firm shall commence. If again unsuccessful, the process is repeated with the next ranked firm. This process is continued until a mutually agreeable contract is concluded or the project is abandoned, or the procurement process is otherwise terminated. The firm awarded the contract may be required to execute a truth-in-negotiation certificate stating that the wage rates and other unit costs are accurate, complete and current at the time of contracting. Any professional service agreement in which the certificate is required shall contain a provision that the agreement price shall be adjusted to exclude any significant sums where the town determines the agreement price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such agreement adjustments shall be made within one year following the end of the agreement.

(K) *Award.* Upon agreement of terms and conditions for a final negotiated contract, a contract shall be awarded by the town manager.

(L) *Contracts for professional services.* Notwithstanding the foregoing provision of this section, the noncompetitive procurement of contracts for legal, medical, independent certified public accounting, or other professional services is hereby authorized by negotiation with organizations or persons on the basis of experience, skill, and financial capacity to perform and shall be approved as provided in subsection (N) herein. Notwithstanding the foregoing, selection of an independent financial auditor to perform a "financial audit" as defined by F.S. § 11.45(1)(c) and other audit functions as may be requested for the Town shall comply with the requirements of F.S. § 218.391.

(M) *Contracts for expert witnesses.* Expert witnesses are exempt from the purview of this chapter.

(N) *Award of professional service contracts.* Contracts for professional services shall be negotiated and awarded by the town manager.

~~(G) *Direct negotiation procurement.* If, due to time constraints or other circumstances, resolicitation for bids is not in the best interest of the town, the town manager may authorize direct negotiation for the procurement of goods, services or construction, and waive any or all requirements set forth in this chapter that might otherwise apply to the procurement. Negotiations shall be by means promulgated in the purchasing manual.~~

(Ord. 03-03, passed 3-3-03: Ord. 07-08, passed 4-9-07)
(Ord. No. 2011-27, § 15, 8-10-11)(Ord. No. 2014- , - -14)

38.27 Procedures for award of design-build contracts.

(A) The town shall award design-build contracts in accordance with the provisions of the CCNA and hereby adopts the rules for the award of design-build contracts established by the State of Florida's Department of Management Services to be followed by state agencies, as provided for under Chapter 60D-13, Florida Administrative Code (F.A.C.).

(B) The town reserves the right to modify the rules set forth under Chapter 60D-13, F.A.C., for award of any design-build contract. Any modifications by the town to said rules shall be stated in the procurement documents for that particular design-build contract.

(C) Pursuant to F.S. § 287.055(9)(c), during the selection of the design-build firm the town shall employ or retain a licensed design professional appropriate to the project to serve as the town's representative.

(Ord. No. 2014- , - -14)

~~**38.25 Protest.**~~

~~(A) *Right to protest.* Any actual or prospective bidder or proposer who is allegedly aggrieved in connection with the issuance of a solicitation for a bid or proposal, suspension, debarment, consultant an evaluation of bids or proposals, or an pending award related to any procurement of a contract may protest to the financial specialist in accordance with the purchasing manualtown. Any protest shall be concise and logically presented to facilitate review. Failure to substantially comply with any of the requirements in this section may be grounds for dismissal of the protest. Protests must be typewritten and hand-delivered or mailed to the financial specialist. If a protest is mailed, it shall be sent by registered or certified mail, return receipt requested, and must be received by the financial specialist prior to the applicable deadline. Protests may not be sent by e-mail or facsimile machine without the prior approval of the financial~~

specialist. Grounds for protest not timely raised shall be deemed waived and shall not be raised in a subsequent protest.

(B) Consideration of protest.

The financial specialist will acknowledge receipt of a protest by any party that has standing to do so ("Protestor"), and the written comments of other potentially interested parties ("Interested Parties"), where applicable. The financial specialist shall distribute copies of the protest to any Interested Parties within two (2) business days of receiving the protest. Such Interested Parties must file any comments or response in writing with the financial specialist within three (3) business days of receiving the protest. The financial specialist will promptly forward copies of any such comments and responses to the Protester.

Upon receipt of a valid protest, the town manager shall appoint a three-member Protest Dispute Committee. The Protest Dispute Committee shall attempt to hold a meeting with the Protestor within seven town workdays of receipt of the protest. The purpose of the meeting of the Protest Dispute Committee, the Protestor, and Interested Parties, is to provide an opportunity (1) to review the basis of the protest, (2) to evaluate the facts and merits of the protest, (3) if possible, to reach a resolution of the protest that is acceptable to the parties, and (4) if possible, to satisfy the Protestor to the extent that the protest might be withdrawn. Further, the Protest Dispute Committee may request additional submissions or information from the Protestor or Interested Parties, or take any other actions deemed useful or necessary in making a decision. Any statements made by members of the Protest Dispute Committee in any such meeting shall be considered statements made in furtherance of settlement and shall be inadmissible in subsequent legal proceeding.

In the event the protest cannot be resolved by mutual agreement, the Protest Dispute Committee shall then refer the protest to the town manager with a recommendation in writing for resolution of the protest. The town manager may conduct an evidentiary hearing if there are disputed issues of material fact. The town manager will conduct a review and will attempt to make a final written decision within ten (10) Town workdays after receipt of the recommendation or the date of the evidentiary hearing, whichever is later. The town manager's decision shall be final and binding unless a party commences an action in court.

If the protest is sustained, the financial specialist shall take the appropriate action to correct the procurement action and protect the rights of the Protestor. If the protest is denied, the financial specialist will notify the

Protestor and the Interested Parties, if any, to the extent they were previously informed.

(C) Requirements to protest.

Deadline to file protest.

If the protest relates to a suspension or debarment, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after vendor is notified of the suspension or debarment.

If the protest relates to the content of a solicitation for bids or proposals, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after issuance of the bid/proposal package.

If the protest relates to the evaluation of bids or proposals, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after completion of the evaluation of the bids or proposals.

If the protest relates to an award under a procurement process, a formal written protest must be filed no later than 5:00 p.m., on the fifth full business day after posting of the award determination.

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

(3) The formal written protest shall identify the protesting party and the solicitation involved; include a clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances or other legal authorities which the protesting party deems applicable to such grounds; and specifically request the relief to which the protesting party deems itself entitled by application of such authorities to such grounds.

(4) Any party who files a written protest shall deposit with the Purchasing Department cash in the amount of $400.00 with its protest. If after completion of review by the Protest Dispute Committee, town manager, and any subsequent court proceedings, the decision of the Purchasing Department is upheld, the Town shall retain the $400.00 to defray the costs and expenses incurred

~~considering the protest. If the Protestor prevails, the Protestor shall recover the cash deposit.~~

~~(D) *Sole remedy.* These procedures shall be the sole remedy for challenging an award under a procurement. Bidder/proposers are prohibited from attempts to influence, persuade, or promote a protest through any other channels or means. Such attempts shall be cause for suspension in accordance with subsection 38.(C) of this chapter.~~

~~(BE) *Damages.* In the event of any court upholding the protestant's claim, the court awarded damages on behalf of the protestant shall be solely limited to bid or proposal preparation costs and reimbursement of the amount of the protest deposit.~~

~~(F) *Time limits.* The time limits in which protests must be filed as specified herein may be altered by specific provisions in the Invitations for Bids or Request for Proposals.~~

~~(G) *Stay of procurement during protests.* There shall be no automatic stay of procurement during protests.~~

~~*(Ord. 03-03, passed 3-3-03)*~~
~~*(Ord. No. 2011-27, § 16, 8-10-11)*~~*(Ord. No. 2014- , - -14)*

38.~~26~~ 30 Retention of procurement records.

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of State, Division of Archives, for the State of Florida. All retained documents shall be made available to the ~~department~~ Department of ~~state~~ State upon request and proper receipt therefor.

(3-703) (Ord. 03-03, passed 3-3-03)(Ord. No. 2014- , - -14)*

38.~~27~~ 31 Suspension and debarment.

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

(~~A~~B) *Authority.* The financial specialist may suspend or debar for cause, the right of a vendor to be included on a ~~vendor~~ bidders list, and any bid or response from that vendor shall be rejected.

(~~B~~C) *Suspension.* Vendor may be suspended for a period not to exceed two years as determined by the financial specialist based upon the criteria set forth in the purchasing manual.

(~~C~~D) *Debarment.* A vendor may be permanently debarred for the following:

(1) Default or failure to fully comply with the conditions, specifications, drawings, or terms of a bid, proposal or contract with the town twice in a three-year period.

(2) Conviction of or judgment obtained in a court of competent jurisdiction for commission of criminal offenses in connection with any of the vendor's commercial enterprises. If the conviction is reversed through the appellate process, the debarment shall be removed upon written notification and proof of final court disposition from vendor to the town.

(~~D~~E) *Decision.* After the financial specialist has determined there is ~~he has~~ cause to suspend or debar a vendor, the financial specialist shall notify the vendor in writing of the debarment or the period of suspension and the reasons for the action taken.

(~~E~~F) *Public entity crime.* Any vendor, who has been convicted of a public entity crime as defined by F.S. § 287.133, shall not be able to transact business with the town to the extent as specified in F.S. § 287.133(3)(a).

(~~F~~G) *Finality of decision.* The suspension or debarment shall be final and conclusive unless the suspended or debarred vendor initiates protest proceedings pursuant to § 38.~~25~~32.

(Ord. 03-03, passed 3-3-03: Ord. 07-08, passed 4-9-07)
(Ord. No. 2011-27, § 17, 8-10-11)(Ord. No. 2014- , - -14)

38.32 Protest procedure.

(A) *Right to protest.* Any actual or prospective bidder or proposer who is allegedly aggrieved in connection with the issuance of a solicitation for a bid or proposal, suspension, debarment, an evaluation of bids or proposals, or an award related to any procurement may protest to the town. Any protest shall be concise and logically presented to facilitate review. Failure to substantially comply with any of the

requirements in this section may be grounds for dismissal of the protest. Protests must be typewritten and hand-delivered or mailed to the financial specialist. If a protest is mailed, it shall be sent by registered or certified mail, return receipt requested, and must be received by the financial specialist prior to the applicable deadline. Protests may not be sent by e-mail or facsimile machine without the prior approval of the financial specialist. Grounds for protest not timely raised shall be deemed waived and shall not be raised in a subsequent protest.

(B) Consideration of protest.

(1) The financial specialist will acknowledge receipt of a protest by any party that has standing to do so ("Protestor"), and the written comments of other potentially interested parties ("Interested Parties"), where applicable. The financial specialist shall distribute copies of the protest to any Interested Parties within two (2) business days of receiving the protest. Such Interested Parties must file any comments or response in writing with the financial specialist within three (3) business days of receiving the protest. The financial specialist will promptly forward copies of any such comments and responses to the Protester.

(2) Upon receipt of a valid protest, the town manager shall appoint a three-member Protest Dispute Committee. The Protest Dispute Committee shall attempt to hold a meeting with the Protestor within ten (10) town workdays of receipt of the protest. The purpose of the meeting of the Protest Dispute Committee, the Protestor, and Interested Parties, is to provide an opportunity (1) to review the basis of the protest, (2) to evaluate the facts and merits of the protest, (3) if possible, to reach a resolution of the protest that is acceptable to the parties, and (4) if possible, to satisfy the Protestor to the extent that the protest might be withdrawn. Further, the Protest Dispute Committee may request additional submissions or information from the Protestor or Interested Parties, or take any other actions deemed useful or necessary in making a decision. Any statements made by members of the Protest Dispute Committee in any such meeting shall be considered statements made in furtherance of settlement and shall be inadmissible in subsequent legal proceeding.

(3) In the event the protest cannot be resolved by mutual agreement, the Protest Dispute Committee shall then refer the protest to the town manager with a recommendation in writing for resolution of the protest. The town manager may conduct an evidentiary hearing if there are disputed issues of material fact. The town manager will conduct a review and will attempt to make a final written decision within ten (10) town workdays after receipt of the recommendation or the date of the evidentiary hearing, whichever is later.

The town manager's decision shall be final and binding unless a party commences an action in court.

(4) If the protest is sustained, the financial specialist shall take the appropriate action to correct the procurement action and protect the rights of the Protestor. If the protest is denied, the financial specialist will notify the Protestor and the Interested Parties, if any, to the extent they were previously informed.

(C) Requirements to protest.

(1) Deadline to file protest.

a. If the protest relates to a suspension or debarment, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after vendor is notified of the suspension or debarment.

b. If the protest relates to the content of a solicitation for bids or proposals, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after issuance of the bid/proposal package.

c. If the protest relates to the evaluation of bids or proposals, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after the bidders/proposers receive notification of the determination regarding an evaluation of the bids or proposals.

d. If the protest relates to an award under a procurement process, a formal written protest must be filed no later than 5:00 p.m., on the fifth full business day after posting of the award determination.

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

(3) The formal written protest shall identify the protesting party and the solicitation involved; include a clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances or other legal authorities which the protesting party deems applicable to such grounds; and specifically request the relief to which the protesting party deems itself entitled by application of such authorities to such grounds.

(4) Any party who files a written protest shall deposit with the Purchasing Department cash in the amount of $400.00 with its protest. If after completion of review by the Protest Dispute Committee, town manager, and any subsequent court proceedings, the decision of the Purchasing Department is upheld, the Town shall retain the $400.00 to defray the costs and expenses incurred considering the protest. If the Protestor prevails, the Protestor shall recover the cash deposit.

(D) *Sole remedy.* These procedures shall be the sole remedy for challenging an award under a procurement. Bidder/proposers are prohibited from attempts to influence, persuade, or promote a protest through any other channels or means. Such attempts shall be cause for suspension in accordance with subsection 38.31(C) of this chapter.

(E) *Damages.* In the event of any court upholding the protestant's claim, the court awarded damages on behalf of the protestant shall be solely limited to bid or proposal preparation costs and reimbursement of the amount of the protest deposit.

(F) *Time limits.* The time limits in which protests must be filed as specified herein may be altered by specific provisions in the Invitations for Bids or Request for Proposals.

(G) *Stay of procurement during protests.* There shall be no automatic stay of procurement during protests.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 16, 8-10-11)(Ord. No. 2014- , - -14)

38.~~28~~ 33 Inspection and test.

(A) The financial specialist may inspect or arrange for the inspection of all deliveries of supplies, materials, equipment or contractual services to determine conformance with specifications set forth in the order of contract.

(B) Any department, which has the staff and facilities for adequate inspection may be authorized by the financial specialist to inspect deliveries, made to it.

(C) The financial specialist shall have the authority to require chemical and/or physical tests or samples submitted with bids and samples of deliveries, which are necessary to determine their quality and conformance with the specifications. For such tests, the financial specialist shall have the authority to make use of facilities of an agency of the

town government or any outside laboratory. Should the product fail such testing, the town may require the vendor to pay the town for any expense incurred in testing.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 18, 8-10-11)(Ord. No. 2014- , - -14)

PURCHASES OF REAL PROPERTY

38.37 Procedures.

(A) *Purpose.* The purpose of this subchapter is to provide procedures for the purchase of real property by the town to be used for lawful municipal purposes.

(B) *Procedure for purchases of real property.*

(1) The town commission is authorized to approve the purchase of real property (which may include lands, buildings and associated personal property) for use by the town for any lawful municipal purpose.

(2) Prior to authorizing any purchase of real property, the town commission shall direct that an appraisal of the property be secured from a professional appraiser who is a member of an organization listed in F.S. § 253.025(67)-(b). If the purchase price exceeds $500,000.00, a minimum of two appraisals shall be obtained. The appraisal(s) shall be provided to the town manager at least three days prior to the final action by the town commission on the proposed purchase. A copy of the appraisal(s) shall also be available in town hall for public inspection. The town commission may by a majority vote exempt a purchase in the amount of $100,000.00 or less from the appraisal requirement ~~of the appraisal~~ stated above.

(3) The town commission shall consider the appraisal(s), any other information provided by the town manager, ~~his~~ town staff, or consultants, and shall receive and consider public comment on the decision to purchase.

(4) If the town commission is to consider the purchase of real property pursuant to this subsection at a meeting other than a regular meeting of the town commission, then the town manager shall publish, at least seven days prior to the proposed special meeting, a notice in a newspaper of general circulation within the town ~~that the commission is considering the purchase of real property,~~ which shall ~~be~~ briefly described the subject property, and state that the appraisal(s) will be available for public inspection as provided herein.

(5) The town commission may purchase real property pursuant to this subsection by a vote of not less than five affirmative votes.

(C) *Additional procedures.* Nothing contained in this section shall be construed to prohibit or limit the town from utilizing any other procedure for the purchase of real property which may be provided by state law, including but not limited to F.S. § 166.045.

(Ord. 03-03, passed 3-3-03)(Ord. No. 2014- , - -14)

PURCHASING MANUAL

38.38 Purchasing manual changes.

The financial specialist from time to time may update or change procedures in the purchasing manual with written authorization by the town manager. Any changes to the purchasing manual shall be consistent with the provisions of this chapter. In the event of any discrepancy between the provisions of this chapter and the purchasing manual, the provisions of this chapter shall govern.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 19, 8-10-11)(Ord. No. 2014- , - -14)

CHAPTER 38 - PURCHASING PROCEDURES

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GENERAL PROVISIONS

38.01 Purpose.

The purpose of this chapter is the establishment of a centralized purchasing procedure in order to provide for the fair and equitable treatment of all persons involved in public purchasing by the town, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

(References are to Model Procurement Code.) (Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 3, 8-10-11)

38.02 Definitions.

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

Departments means the departments and agencies of the town, including but not limited to the Police Department, Planning, Zoning, & Building Department, Fire Department, Public Works Department, IT Department, and Finance Department.

Evaluation criteria means the bases upon which the town will rely to determine acceptability of a bid or proposal, as stated in the bid, the proposal, or this chapter, including, but not limited to, inspection, testing, quality, workmanship, delivery, price, 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.

Lowest and best bid/price means the apparent lowest bidder or proposer whose bid or proposal best meets the needs of the Town as stated in the invitation to bid, the request for proposal, or this chapter.

Public notice means the required notification or advertisement of an invitation to bid, request for proposal, or other competitive solicitation provided for in this chapter, to be given to prospective vendors for a reasonable period of time as determined by the financial specialist, which shall, at a minimum, include posting public notice on the Town's website and a notice in a newspaper of general circulation when required by applicable law. The public notice shall describe the goods or services sought, and state the date, time and place of the bid/proposal/solicitation opening.

Purchase/procurement means the acquisition of goods and/or services.

Responsible bidder means a bidder who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance.

Responsible proposer means a proposer who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance.

Responsive bid means a bid submitted by a responsive and responsible bidder which conforms in all material respects to the invitation for bids.

Responsive bidder means a bidder who has submitted a bid which conforms in all material respects to the invitation for bids.

Responsive proposal means a proposal submitted by a responsive and responsible proposer which conforms in all material respects to the request for proposal.

Responsive proposer means a proposer who has submitted a proposal which at a minimum conforms in all material respects to the request for proposal.

Town means the town commission and the departments of the town.

(Ord. No. 2014-__, passed _-__-14)

38.03 Waiver of provisions.

The town commission may waive any provision of this chapter by resolution.

(Ord. No. 2014-__, passed _-__-14)

GENERAL PROVISIONS

38.10 Reserved.

38.11 Authority of the financial specialist.

(A) Article III, § 4, subparagraph (i) of the Charter of the Town of Longboat Key ("Town Charter") provides that the town manager shall serve as purchasing agent for the town. To assist the town manager with these duties, the town manager hereby designates the financial specialist as the principal purchasing official for the town. The financial specialist shall report to the finance director.

(B) The town manager hereby designates the financial specialist the authority to advise the town manager concerning all rights, powers, and authority related to the procurement and contracting of goods and services as provided by the Town Charter.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 5, 8-10-11)(Ord. No. 2014-__, passed _-__-14)

38.12 Delegation of authority by the town manager.

The town manager may further delegate rights, powers, and authority vested in the financial specialist to a designated department head, when deemed necessary, provided such department head shall comply with all requirements of this chapter and any other applicable law.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 6, 8-10-11)(Ord. No. 2014-__, passed _-__-14)

38.13 Duties of the financial specialist.

The authority of the financial specialist is governed by the ordinance codified in this chapter together with the policies and procedures manual promulgated by the town manager, all of which must be in accordance with the provisions of the Town Charter and other applicable laws.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 7, 8-10-11)

38.14 Encumbrance of funds.

(A) The town manager shall not award any contract, issue any order for delivery on a contract, or make any open market purchase, until the financial specialist obtains written or electronic approval from the finance department that there is a sufficient unencumbered appropriation balance to defray the amount of such order, pursuant to article V, § 9, of the Town Charter.

(B) Any purchase that would exceed the amount budgeted by less than $10,000.00 for that item or service, and where sufficient unencumbered appropriations remain within the department, office, or agency, requires the town manager's authorization pursuant to article V, § 9(d), of the Town Charter.

(C) Any purchase that would exceed the amount budgeted by $10,000.00 or more for that item or service, and where sufficient unencumbered appropriations remain within a department, office, or agency, may be authorized by the town commission upon a written request by the town manager to transfer funds, pursuant to article V, § 9(d) of the Town Charter.

(D) Any purchase that would exceed the amount budgeted by $10,000.00 or more for that item or service, where there is insufficient unencumbered funds within that department, office or agency but there is sufficient unencumbered funds within another department, office, or agency, may be authorized by resolution by the town commission

upon a written request by the town manager to transfer funds, pursuant to article V, § 9(d) of the Town Charter.

(E) Any purchase that would exceed the amount budgeted for that item or service and where there is insufficient unencumbered funds within a department, office, or agency, shall require supplemental appropriations in accordance with article V, § 9 of the Town Charter.

(F) Approval by the town manager is required for all purchases. In addition thereto, the town commission may reserve its authority to approve or deny purchases, in whole or in part, at any time.

(G) All purchases in excess of $3,000.00, unless emergency in nature, shall be processed through the finance department and in accordance with the provisions of this chapter. Any purchase or contract made contrary to the provisions hereof shall not be binding on the town unless approved by the town manager or town commission or in accordance with the Town Charter and Code of Ordinances.

(Ord. 03-03, passed 3-3-03: Ord. 07-08, passed 4-9-07)
(Ord. No. 2011-27, § 8, 8-10-11)(Ord. No. 2014- , - -14)

38.15 Department head purchasing authority.

A department head, with prior approval of the town manager, may make or authorize others to make procurements of supplies, services or construction items in amounts less than $3,000.00 per vendor, on a routine basis to maintain work flow and services. If the vendor is under contract with the town, the purchase shall be from that vendor, unless extenuating circumstances exist which make it impractical or undesirable to purchase from that vendor. For purchases less than $3,000.00, there shall be no need to obtain quotations. The purchases are to be reviewed quarterly by the financial specialist and the finance department for adherence to competitive and fair purchasing practices.

(Ord. 03-03, passed 3-3-03: Ord. 07-08, passed 4-9-07)
(Ord. No. 2011-27, § 9, 8-10-11)

38.16 Public access to procurement information.

Procurement information shall be a public record to the extent provided for by applicable Florida law and all town records generated pursuant to this chapter shall be available to the public as provided for therein.

(1-401)(Ord. 03-03, passed 3-3-03)(Ord. No. 2014- , - -14)

PURCHASING PROCEDURES

38.17 Application and exclusions.

The provisions of this chapter shall apply to every purchase or procurement of goods, supplies, equipment, materials, or services, or the letting of any contract for or related to any construction project by the town, the departments, and the advisory boards, which are under the control of the town commission. This chapter shall apply to every expenditure of public funds by the town for public purchasing irrespective of the fund source, including state and federal assistance monies, except as otherwise specified by law. The provisions of this chapter shall not apply to:

(A) Agreements between the town and nonprofit organizations or governmental entities including the procurement, transfer, sale or exchange of goods and/or services.

(B) Procurement of dues and memberships in trade or professional organizations; subscriptions for periodicals; advertisements; postage; expert witnesses; abstracts of titles for real property; title insurance for real property; court reporter services; water, sewer, and electrical utility services; copyrighted materials; patented materials; and fees and costs of job-related seminars and training.

(C) Goods and/or services given or accepted by the town via grant, gift or bequest.

(D) Any state contract; any contract which has been let to the lowest qualified and responsible bidder pursuant to competitive sealed bids or request for proposal by any county, municipality, school board, other units of local government, the Florida Sheriff's Association, or the Florida Association of Counties and any governmental cooperative or alliance (where an alliance is a group of local governments banded together to achieve economies in contracting prices for the acquisition of certain goods, services, supplies, equipment or materials).

(E) Professional consulting services where the selection process conforms to state law.

(F) Items purchased for resale to the general public.

(G) Purchases from private cooperative groups or organizations or a federal general services contract when the best interests of the town would be served thereby, provided the finance department has attempted to obtain three written or verbal quotations and

those quotations confirm that the contract price is lower than the price available from vendors who are not a party to said contract.

(H) Wrecked town vehicles, which have been appraised or designated by the town's appraiser for repair.

(I) Emergency vehicle repairs.

(J) Any purchase from a local vendor whose principal place of business is in Manatee or Sarasota County and whose price, terms, and conditions for the item to be purchased is the same as or lower than a competitively bid state of Florida, county, municipality, school board, other unit of local government, Florida Sheriff's Association, Florida Association of Counties, governmental cooperative, or governmental alliance contract.

(Ord. 03-03, passed 3-3-03: Ord. 07-08, passed 4-9-07)
(Ord. No. 2011-27, § 11, 8-10-11)(Ord. No. 2014- , passed - -14)

38.18 Procedure for securing quotes and bids.

(A) Prices for purchases between $3,000.00 and $10,000.00 shall be submitted in writing from the vendor or firm submitting the quotation. Purchases estimated to cost between $10,000.01 and $34,999.99 will be written and submitted by the vendor or firm quoting. Where oral quotations are received, rather than written quotations, documentation of reasons for infeasibility of written quotations shall be noted and authorized by the financial specialist prior to the purchase. Every effort will be made to obtain a minimum of three (3) or more quotations for purchases estimated between $3,000.00 and $10,000.00. Every effort will be made to obtain a minimum of six (6) or more quotations for purchases estimated between $10,000.01 and $34,999.99 for goods, supplies, material and equipment; and $10,000.01 to $100,000.00 for public works projects. Any purchase that is anticipated to exceed $35,000.00, except as allowed for public works projects, shall be posted on an electronic notification service.

(B) Written requests for quotations will be mailed, e-mailed, or faxed to prospective bidders, as feasible, and such requests for quotations shall indicate the deadline for receipt of the quote. No quote will be considered if received after the deadline for receipt. Sole Source purchases, Emergency Purchases, and other purchases identified as excluded in this chapter are exempted with the prior approval of the financial specialist. Completely documented requests for quotations shall be maintained in the finance department.

(C) The user department, if authorized by the financial specialist, may obtain quotations from vendors independent of the finance department provided the quotations are authorized by the financial specialist and the quotations include the names of the vendors solicited, telephone numbers, contact names, and a written response attached from each vendor (quotations from vendors under contract with the town shall be used, if available) on a completed quotation form. The quotations and form shall be submitted to the finance department for review and award. Quotations may be verified and additional quotations may be obtained at the discretion of the financial specialist.

(D) *Direct negotiation procurement.* If, due to time constraints or other circumstances, solicitation or resolicitation of bids or proposals is not in the best interest of the town, the town manager may authorize direct negotiation for the procurement of goods, services or construction, and waive any or all requirements set forth in this chapter that might otherwise apply to the procurement. Negotiations shall be by means set forth in this chapter.

(Ord. No. 14- , - -14)

38.19 Bidder qualifications.

(A) In determining the responsible and responsive bidder who submits the lowest and best bid, in addition to price, the town manager or his/her designee, shall consider, at a minimum:

1. The ability, capacity and skill of the bidder to perform the contract or provide the service required;

2. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

4. The quality of performance of previous contracts or services;

5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;

6. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

7. The quality, availability and adaptability of the goods or services to the particular use required;

8. The ability of the bidder to provide future maintenance and service;

9. The number and scope of conditions attached to the bid.

(B) *Prequalification of general contractors.* General contractors wishing to bid on the town's construction projects in excess of $100,000.00 may be required to be prequalified with the town manager or his/her designee prior to bid opening. Types of construction that may require prequalification include, but are not limited to, road and street, building, water and sewer, marine, bridge, and well drilling. The primary criteria considered in determining qualification are financial capability and previous job experience and performance.

1. Prequalification is recommended to the town manager or his/her designee for final approval by a prequalification committee.

2. Prequalification is not a conclusive determination of responsibility, and a prequalified bidder may be rejected as non-responsible on the basis of subsequently discovered information.

(Ord. No. 2014- , passed - -14)

38.20 Bid and contract security.

(A) Bid security.

(1) *Requirement for bid security.* Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated to exceed $100,000.00. Bid security shall be in a form satisfactory to the town attorney. Nothing herein shall prevent the requirement of such security on other contracts when the circumstances warrant.

(2) *Amount of bid security.* Bid security for all other competitive sealed bids and proposals shall be in an amount equal to at least five percent of the amount of the bid, unless the financial specialist determines that the nature of the project is such that the bid security requirement would work a hardship on most potential bidders or otherwise deemed to be impractical or unnecessary.

(3) *Rejection of bids for noncompliance with bid security requirements.* When the invitation for bids requires bid security, a bid shall be rejected in the event of

noncompliance unless it is determined that the bid fails to comply only in a nonsubstantial manner with the security requirements.

(B) *Contract security.* When a construction contract is awarded in excess of $100,000.00, security, as described below, shall be provided in conformance with the minimum requirements of F.S. § 255.05, and shall become binding upon the execution of the contract.

(1) A performance bond satisfactory to the town attorney, executed by a surety insurer authorized to do business in the state of Florida as a surety, in an amount equal to 100 percent of the price specified in the contract, conditioned that the contractor perform the contract in the time and manner prescribed in the contract; and

(2) A payment bond satisfactory to the town attorney, executed by a surety insurer authorized to do business in the state of Florida as a surety, in an amount equal to 100 percent of the price specified in the contract, conditioned that the contractor promptly make payments to all persons supplying labor, materials or supplies used directly or indirectly in the performance of the work provided for in the contract, and who are claimants as described in F.S. § 255.05(1).

(C) *Authority to require additional security.* Nothing in this section shall be construed to limit the authority of the town to require a performance bond or other security in addition to those bonds, or in circumstances other than, as specified in subsection (B) of this section.

(Ord. No. 2014- , - -14)

38.21 Source selection.

(A) The procurement of goods, services, materials, supplies and equipment, by or on behalf of the town, including those transactions through which the town shall receive revenue, in an amount equal to or in excess of $35,000.00, shall be awarded by a competitive bid or competitive proposal process as specifically provided herein, except as otherwise provided herein, or by state or federal law. Competitive sealed bidding shall be the preferred method of competition where possible.

(B) Any purchase for an amount less than $35,000.00, except as provided in section 38.15, or contract for the working of any capital improvement and repair projects in an amount less than $100,000.00 may be made in accordance with those procedures

promulgated in subsection 38.18(A) provided, however, no purchase shall be artificially divided so as to constitute a purchase under this section.

(C) Nothing in the foregoing shall prohibit the town from renewing purchase orders or contracts provided the vendor was originally selected through a competitive selection process, and further provided such renewal is within the scope of the original purchase order or contract.

(Ord. 03-03, passed 3-3-03: Ord. 07-08, passed 4-9-07)
(Ord. No. 2011-27, § 12, 8-10-11)(Ord. No. 2014- , - -14)

38.22 Competitive sealed bidding.

(A) *Invitation for bids.* An invitation for bids shall be issued which shall include the specifications and all contractual terms and conditions applicable to the procurement.

(B) *Public notice.* Public notice of the invitation for bids shall be published in a newspaper of general circulation in Sarasota or Manatee County once for a period not less than 14 days prior to bid receiving date or for a period as required by F.S. ch. 287 for public works projects. A bid invitation shall be made available to vendors through an electronic notification service. The public notice shall identify the item being bid and state the place, date, and time of bid opening.

(C) *Bidders list.* Bids shall be invited from all responsible prospective vendors through an electronic notification service or such other notice as will acquaint them with the proposed purchase. Vendor invitations to bid shall be limited to goods and services that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

(D) *Bid submission.* Bids must be received no later than the time and date and at the location specified for the bid opening in the invitation for bids. No bids shall be accepted after such time and date or at any location other than what is specified in the invitation for bids; any bids received later or at any other location than specified shall be returned to the bidder. It shall be the bidder's sole responsibility to ensure that its bid reaches the specified place for receipt of bids by the specified time. Bidders shall be allowed to withdraw their bids at any time prior to bid opening.

(E) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place specified in the invitation for bids. The name of each bidder shall be announced and recorded at the public opening as indicated in the invitation for bids

or accepted and announced at a later time as allowed by F.S. ch. 119. Bids will be made public in accordance with the provisions of F.S. ch. 119.

(E) *Bid cancellation or postponement.* The financial specialist may, prior to bid opening, elect to cancel an invitation for bids or postpone the date and/or time of bid submission or opening.

(F) *Corrections, additions to, and withdrawal.* The financial specialist shall promulgate and adopt policies regarding corrections, additions to, and withdrawal of bids.

(G) *Bid receipt and bid evaluation.* Bids shall be received without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the criteria set forth in the invitation for bids. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(H) *Bid award.* The town manager shall make award to the responsive and responsible bidder whose bid is determined to be the lowest and best bid that meets the requirements and criteria set forth in the invitation for bids and whose award will, in the opinion of the town manager, be in the best interest and most advantageous to the town. Awards shall be effective upon issuance of a purchase order, or written notice of award by the town manager. In the event only one responsive bid is received, the town manager may award to the sole bidder or rebid. Awards shall subsequently be posted at the town hall public bulletin board. Bids with contracts will be approved for execution by the town manager, or any official authorized by the town manager, when the bid awards period has been completed.

(I) *Rejection of bids.* The town manager reserves the right to accept or reject any and all bids or parts of bids at any time when the public interest will be served thereby.

(J) *Multi-step sealed bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, or information relating to the experience and capabilities of the prospective bidders, to be followed by an invitation for bids limited to those bidders whose offers or experience and capabilities have been determined to be acceptable under the criteria set forth in the first solicitation.

(K) *Tie bids.* If two or more bids received are for the same total amount or unit price, or in the case of proposals, the qualifications, quality and service are equal, the contract shall be awarded to the local bidder/proposer. A local firm is defined as a firm with headquarters in geographical Manatee or Sarasota County. Headquarters shall mean the office location that serves as the administrative center and principal place of

business. If two or more bids received are for the same total amount or unit price or in the case of proposals, the qualifications, quality and service are equal and no firms are deemed local, then the contract shall be awarded by drawing lots in public.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 13, 8-10-11)(Ord. No. 2014- , - -14)

38.23 Competitive sealed proposal process.

When it is determined and documented in writing by the using department and the financial specialist that the use of competitive sealed bidding is either not practical or not advantageous to the town due to the technical or specialized nature of the goods or services sought, the financial specialist may authorize the following competitive sealed proposal processes as an alternative to the competitive sealed bidding process:

(A) *Request for proposals, request for qualifications, or request for information.* Such requests, setting forth the terms and conditions of the goods or services sought including evaluation factors, shall be solicited through a request for proposals (RFP), request for qualifications (RFQ), or request for information (RFI) and public notice of the RFP/RFQ/RFI shall be given. The RFP/RFQ/RFI shall state the evaluation factors, which may include, but not be limited to, price, vendor approach and methodology, capability, and experience.

(B) *Proposal submission.* Proposals must be received no later than the time and date and at the location specified for the proposal opening in the RFP/RFQ/RFI. No proposals shall be accepted after such time and date or at any location other than what is specified in the RFP/RFQ/RFI; any proposals received later or at any other location than specified shall be returned to the proposer. It shall be the proposer's sole responsibility to ensure that its proposal reaches the specified place for receipt of proposals by the specified time. Proposers shall be allowed to withdraw their proposals at any time prior to proposal opening.

(C) *Proposal opening.* Proposals shall be opened publicly in the presence of one or more witnesses at the time and place specified in the RFP/RFQ/RFI. The name of each proposer shall be announced and recorded at the public opening as indicated in the RFP/RFQ/RFI, or accepted and announced at a later time as allowed by F.S. ch. 119. Proposals will be made public in accordance with the provisions of F.S. ch. 119.

(D) *RFP/RFQ/RFI cancellation or postponement.* The financial specialist may, prior to proposal opening, elect to cancel an RFP/RFQ/RFI, or postpone the date and/or time of proposal submission or opening.

(E) *Corrections, additions to, and withdrawal.* The financial specialist shall promulgate and adopt policies regarding corrections, additions to, and withdrawal of proposals.

(F) *Proposal receipt and proposal evaluation.* Proposals shall be received without alteration or correction, except as authorized in this chapter. Proposals shall be evaluated based on the criteria set forth in the RFP/RFQ/RFI. No criteria may be used in proposal evaluations that are not set forth in the RFP/RFQ/RFI.

(G) *Discussion with responsible and responsive proposers.* Discussions may be conducted with responsible and responsive proposers who submit proposals for the purpose of clarification to assure full understanding of the solicitation requirements. Proposers shall be accorded fair and equal treatment and notice with respect to any opportunity for discussion and correction of proposals and such corrections may be permitted prior to award. In conducting discussions, there shall be no exchange of information regarding the content or feasibility of the proposals by competing proposers.

(H) *Proposal evaluation and award.* Award by the town manager shall be made to the most responsive, responsible proposer whose proposal is determined to be in the best interest and the most advantageous to the town in accordance with the evaluation criteria contained in the RFP or to the most qualified firm in the case of a RFQ or RFI. Evaluation of proposers and/or proposals may be made in a multi-step selection or bidding process as set forth in the RFP/RFQ/RFI and shall be based upon factors of responsiveness and quality based upon criteria set forth in the RFP/RFQ/RFI. The RFP/RFQ/RFI shall state the relative importance of price and other criteria. Awards shall be effective upon written notice of award by the town manager. In the event only one responsive proposal is received, the town manager may award to the sole proposer or reissue the RFP/RFQ/RFI. Awards shall subsequently be posted at the town hall public bulletin board. Proposals with contracts will be approved for execution by the town manager, or any official authorized by the town manager, when the proposal awards period has been completed.

(I) *Rejection of proposals.* The town manager reserves the right to accept or reject any and all proposals or parts of proposals at any time when the public interest will be served thereby.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 14, 8-10-11)(Ord. No. 2014- , - -14)

38.24 Sole source purchases.

A sole source purchase exists when research has determined there is only one potential provider for an item. The town manager may make or authorize the purchase of goods, services, supplies, equipment and material without competitive bidding when the financial specialist recommends and the department director of the using department has documented in writing that such goods, supplies, equipment, material or services, are the only source that will meet the departmental needs and are available through only one practicable and reasonable source of supply. Such written determination shall be retained in the appropriate official contract file of the finance department.

(Ord. No. 2014- , - -14)

38.25 Emergency purchases.

Notwithstanding any other provisions of this chapter, the town manager may make or authorize emergency purchases of goods or services that would not be possible, practicable, or reasonable through normal purchasing procedures. Written records of emergency purchases shall be maintained by the finance department. For purposes of this chapter, "emergency purchases" means a procurement made in response to a requirement when the delay incident, to comply with all governing rules, regulations, and procedures would be detrimental to the health, safety or welfare of the town and/or its citizens, or otherwise result in the disruption of essential town operations.

(Ord. No. 2014- , - -14)

38.26 Contracting for designated professional services.

(A) *Consultant services.* Subject to the requirements of F.S. § 287.055, professional and consultant services may be procured by either the competitive sealed proposal process, a RFP or RFI, or as otherwise provided under this chapter. However, professional and consultant services, other than those services identified in F.S. § 287.055, need not be secured by a competitive proposal, RFP, or RFI process when the cost of such professional and consultant services is less than $35,000.00 and where a written finding has been jointly made by the department head, financial specialist, and the town manager outlining that the purchase of such professional and consultant services, without the competitive proposal, RFP, or RFI process, is in the best interest of the town.

(B) *Consultants' Competitive Negotiation Act.* Contracts for construction management services, as provided for under F.S. § 255.103, as well as architectural, professional engineering, landscape architectural, and registered land surveying and mapping services shall be procured in accordance with the provisions provided under F.S. § 287.055, referred to as the Consultants Competitive Negotiation Act (CCNA). All

contracts for such services shall be procured under the supervision of the financial specialist, finance department, and town manager.

(C) *Design-build contracts* . Design-build contracts, as defined in the CCNA, shall be procured in accordance with the provisions of the CCNA and the rules for the award of design-build contracts established by the State of Florida's Department of Management Services to be followed by state agencies, as provided for under section 38.27.

(D) *Continuing contract.* The town is authorized to enter into a continuing contract for CCNA services, whereby the firm provides professional services to the town for projects in which construction costs do not exceed $2,000,000.00, for study activity if the fee for each individual study under the contract does not exceed $200,000.00; or for work of a specified nature as outlined in the contract required by the town, with the contract being for a fixed term or no time limitation, except that the contract must provide a termination clause.

(E) *Evaluator pool.* The financial specialist, with assistance from the user department, shall be responsible for developing and maintaining a pool of qualified evaluators to participate in CCNA evaluation committees, consisting of, but not limited to, representatives from town departments, professional organizations, and internal and external subject matter experts.

(F) *Evaluation committee.* Under a CCNA procurement, an evaluation committee shall consist of at least three, but typically not more than seven members (unless deemed to be in the best interest of the town) selected based upon their expertise and/or association with the project. The evaluation committee must consist of at least one person from the requesting department. The requesting department cannot have majority representation on the evaluation committee. The evaluation committee may also include non-requesting department representatives, internal/external subject matter experts, and local professional organization representatives (if deemed appropriate or necessary). Final composition and qualifications of evaluation committees shall be subject to approval of the town manager.

(G) *Ranking of firms.* The town, through the competitive proposal process, shall make a finding that the firm or individual to be employed is duly qualified to render the required service. The evaluation committee shall review statements of qualifications and performance data submitted in response to the public solicitation and shall select, in order of preference, no fewer than three firms deemed to be the most highly qualified, if at least three firms respond to the solicitation. If less than three firms respond, and after meeting due diligence, it is decided by the financial specialist that every effort was made to comply with the requirements of this chapter, the town will interview all respondents

and proceed with the evaluation process. The evaluation committee may conduct public presentations with a minimum of three firms (if three firms submitted).

(H) *Evaluation criteria.* The evaluation criteria for ranking shall include, at a minimum: ability of firm and its professional personnel; firm experience with projects of a similar size and type; firm's willingness and ability to meet the schedule and budget requirements; volume of work previously awarded by the town; effect of the firms recent/current and projected workload; location; past performance; and, when required, the public presentation. For continuing contracts, ranking and award shall be based on the criteria as stated above. For non-continuing contracts or project specific contracts, public presentation may be required. That requirement shall be stated in the RFP document.

(I) *Public presentations.* The evaluation criteria for public presentations shall include, but not be limited to, the firm's understanding of the project, ability to provide required services within the schedule and budget, qualifications, and approach to the project.

(J) *Contract negotiations.* The town manager shall negotiate a contract with the most qualified firm (number one ranked firm) for professional services for compensation which is deemed to be fair and reasonable. Detailed discussions must be held by the firm and the town to establish the scope of the project and the exact services to be performed by the firm. Should the town and the firm fail to agree upon the terms of an acceptable contract, negotiations with the top firm shall be terminated and negotiations with the second ranked firm shall commence. If again unsuccessful, the process is repeated with the next ranked firm. This process is continued until a mutually agreeable contract is concluded or the project is abandoned, or the procurement process is otherwise terminated. The firm awarded the contract may be required to execute a truth-in-negotiation certificate stating that the wage rates and other unit costs are accurate, complete and current at the time of contracting. Any professional service agreement in which the certificate is required shall contain a provision that the agreement price shall be adjusted to exclude any significant sums where the town determines the agreement price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such agreement adjustments shall be made within one year following the end of the agreement.

(K) *Award.* Upon agreement of terms and conditions for a final negotiated contract, a contract shall be awarded by the town manager.

(L) *Contracts for professional services.* Notwithstanding the foregoing provision of this section, the noncompetitive procurement of contracts for legal, medical, independent certified public accounting, or other professional services is hereby authorized by

negotiation with organizations or persons on the basis of experience, skill, and financial capacity to perform and shall be approved as provided in subsection (N) herein. Notwithstanding the foregoing, selection of an independent financial auditor to perform a "financial audit" as defined by F.S. § 11.45(1)(c) and other audit functions as may be requested for the Town shall comply with the requirements of F.S. § 218.391.

(M) *Contracts for expert witnesses.* Expert witnesses are exempt from the purview of this chapter.

(N) *Award of professional service contracts.* Contracts for professional services shall be negotiated and awarded by the town manager.

(Ord. 03-03, passed 3-3-03: Ord. 07-08, passed 4-9-07)
(Ord. No. 2011-27, § 15, 8-10-11)(Ord. No. 2014- , - -14)

38.27 Procedures for award of design-build contracts.

(A) The town shall award design-build contracts in accordance with the provisions of the CCNA and hereby adopts the rules for the award of design-build contracts established by the State of Florida's Department of Management Services to be followed by state agencies, as provided for under Chapter 60D-13, Florida Administrative Code (F.A.C.).

(B) The town reserves the right to modify the rules set forth under Chapter 60D-13, F.A.C., for award of any design-build contract. Any modifications by the town to said rules shall be stated in the procurement documents for that particular design-build contract.

(C) Pursuant to F.S. § 287.055(9)(c), during the selection of the design-build firm the town shall employ or retain a licensed design professional appropriate to the project to serve as the town's representative.

(Ord. No. 2014- , - -14)

38.30 Retention of procurement records.

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of State, Division of Archives, for the State of Florida. All retained documents shall be made available to the Department of State upon request and proper receipt therefor.

(3-703) (Ord. 03-03, passed 3-3-03)(Ord. No. 2014- , - -14)

38.31 Suspension and debarment.

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

(B) *Authority.* The financial specialist may suspend or debar for cause, the right of a vendor to be included on a bidders list, and any bid or response from that vendor shall be rejected.

(C) *Suspension.* Vendor may be suspended for a period not to exceed two years as determined by the financial specialist based upon the criteria set forth in the purchasing manual.

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

(1) Default or failure to fully comply with the conditions, specifications, drawings, or terms of a bid, proposal or contract with the town twice in a three-year period.

(2) Conviction of or judgment obtained in a court of competent jurisdiction for commission of criminal offenses in connection with any of the vendor's commercial enterprises. If the conviction is reversed through the appellate process, the debarment shall be removed upon written notification and proof of final court disposition from vendor to the town.

(E) *Decision.* After the financial specialist has determined there is cause to suspend or debar a vendor, the financial specialist shall notify the vendor in writing of the debarment or the period of suspension and the reasons for the action taken.

(F) *Public entity crime.* Any vendor, who has been convicted of a public entity crime as defined by F.S. § 287.133, shall not be able to transact business with the town to the extent as specified in F.S. § 287.133(3)(a).

(G) *Finality of decision.* The suspension or debarment shall be final and conclusive unless the suspended or debarred vendor initiates protest proceedings pursuant to § 38.32.

(Ord. 03-03, passed 3-3-03: Ord. 07-08, passed 4-9-07)
(Ord. No. 2011-27, § 17, 8-10-11)(Ord. No. 2014- , - -14)

38.32 Protest procedure.

(A) *Right to protest.* Any actual or prospective bidder or proposer who is allegedly aggrieved in connection with the issuance of a solicitation for a bid or proposal, suspension, debarment, an evaluation of bids or proposals, or an award related to any procurement may protest to the town. Any protest shall be concise and logically presented to facilitate review. Failure to substantially comply with any of the requirements in this section may be grounds for dismissal of the protest. Protests must be typewritten and hand-delivered or mailed to the financial specialist. If a protest is mailed, it shall be sent by registered or certified mail, return receipt requested, and must be received by the financial specialist prior to the applicable deadline. Protests may not be sent by e-mail or facsimile machine without the prior approval of the financial specialist. Grounds for protest not timely raised shall be deemed waived and shall not be raised in a subsequent protest.

(B) Consideration of protest.

(1) The financial specialist will acknowledge receipt of a protest by any party that has standing to do so ("Protestor"), and the written comments of other potentially interested parties ("Interested Parties"), where applicable. The financial specialist shall distribute copies of the protest to any Interested Parties within two (2) business days of receiving the protest. Such Interested Parties must file any comments or response in writing with the financial specialist within three (3) business days of receiving the protest. The financial specialist will promptly forward copies of any such comments and responses to the Protester.

(2) Upon receipt of a valid protest, the town manager shall appoint a three-member Protest Dispute Committee. The Protest Dispute Committee shall attempt to hold a meeting with the Protestor within ten (10) town workdays of receipt of the protest. The purpose of the meeting of the Protest Dispute Committee, the Protestor, and Interested Parties, is to provide an opportunity (1) to review the basis of the protest, (2) to evaluate the facts and merits of the protest, (3) if possible, to reach a resolution of the protest that is acceptable to the parties, and (4) if possible, to satisfy the Protestor to the extent that the protest might be withdrawn. Further, the Protest Dispute Committee may request additional submissions or information from the Protestor or Interested Parties, or take any other actions deemed useful or necessary in making a decision. Any statements made by members of the Protest Dispute Committee in any such meeting shall be considered statements made in furtherance of settlement and shall be inadmissible in subsequent legal proceeding.

(3) In the event the protest cannot be resolved by mutual agreement, the Protest Dispute Committee shall then refer the protest to the town manager with a recommendation in writing for resolution of the protest. The town manager may conduct an evidentiary hearing if there are disputed issues of material fact. The town manager will conduct a review and will attempt to make a final written decision within ten (10) town workdays after receipt of the recommendation or the date of the evidentiary hearing, whichever is later. The town manager's decision shall be final and binding unless a party commences an action in court.

(4) If the protest is sustained, the financial specialist shall take the appropriate action to correct the procurement action and protect the rights of the Protestor. If the protest is denied, the financial specialist will notify the Protestor and the Interested Parties, if any, to the extent they were previously informed.

(C) Requirements to protest.

(1) Deadline to file protest.

a. If the protest relates to a suspension or debarment, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after vendor is notified of the suspension or debarment.

b. If the protest relates to the content of a solicitation for bids or proposals, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after issuance of the bid/proposal package.

c. If the protest relates to the evaluation of bids or proposals, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after the bidders/proposers receive notification of the determination regarding an evaluation of the bids or proposals.

d. If the protest relates to an award under a procurement process, a formal written protest must be filed no later than 5:00 p.m., on the fifth full business day after posting of the award determination.

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

(3) The formal written protest shall identify the protesting party and the solicitation involved; include a clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances or other legal authorities which the protesting party deems applicable to such grounds; and specifically request the relief to which the protesting party deems itself entitled by application of such authorities to such grounds.

(4) Any party who files a written protest shall deposit with the Purchasing Department cash in the amount of $400.00 with its protest. If after completion of review by the Protest Dispute Committee, town manager, and any subsequent court proceedings, the decision of the Purchasing Department is upheld, the Town shall retain the $400.00 to defray the costs and expenses incurred considering the protest. If the Protestor prevails, the Protestor shall recover the cash deposit.

(D) *Sole remedy.* These procedures shall be the sole remedy for challenging an award under a procurement. Bidder/proposers are prohibited from attempts to influence, persuade, or promote a protest through any other channels or means. Such attempts shall be cause for suspension in accordance with subsection 38.31(C) of this chapter.

(E) *Damages.* In the event of any court upholding the protestant's claim, the court awarded damages on behalf of the protestant shall be solely limited to bid or proposal preparation costs and reimbursement of the amount of the protest deposit.

(F) *Time limits.* The time limits in which protests must be filed as specified herein may be altered by specific provisions in the Invitations for Bids or Request for Proposals.

(G) *Stay of procurement during protests.* There shall be no automatic stay of procurement during protests.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 16, 8-10-11)(Ord. No. 2014- , - -14)

38.33 Inspection and test.

(A) The financial specialist may inspect or arrange for the inspection of all deliveries of supplies, materials, equipment or contractual services to determine conformance with specifications set forth in the order of contract.

(B) Any department, which has the staff and facilities for adequate inspection may be authorized by the financial specialist to inspect deliveries, made to it.

(C) The financial specialist shall have the authority to require chemical and/or physical tests or samples submitted with bids and samples of deliveries, which are necessary to determine their quality and conformance with the specifications. For such tests, the financial specialist shall have the authority to make use of facilities of an agency of the town government or any outside laboratory. Should the product fail such testing, the town may require the vendor to pay the town for any expense incurred in testing.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 18, 8-10-11)(Ord. No. 2014- , - -14)

PURCHASES OF REAL PROPERTY

38.37 Procedures.

(A) *Purpose.* The purpose of this subchapter is to provide procedures for the purchase of real property by the town to be used for lawful municipal purposes.

(B) *Procedure for purchases of real property.*

(1) The town commission is authorized to approve the purchase of real property (which may include lands, buildings and associated personal property) for use by the town for any lawful municipal purpose.

(2) Prior to authorizing any purchase of real property, the town commission shall direct that an appraisal of the property be secured from a professional appraiser who is a member of an organization listed in F.S. § 253.025(6)(b). If the purchase price exceeds $500,000.00, a minimum of two appraisals shall be obtained. The appraisal(s) shall be provided to the town manager at least three days prior to the final action by the town commission on the proposed purchase. A copy of the appraisal(s) shall also be available in town hall for public inspection. The town commission may by a majority vote exempt a purchase in the amount of $100,000.00 or less from the appraisal requirement stated above.

(3) The town commission shall consider the appraisal(s), any other information provided by the town manager, town staff, or consultants, and shall receive and consider public comment on the decision to purchase.

(4) If the town commission is to consider the purchase of real property pursuant to this subsection at a meeting other than a regular meeting of the town commission, then the town manager shall publish, at least seven days prior to the proposed special meeting, a notice in a newspaper of general circulation within

the town, which shall briefly describe the subject property, and state that the appraisal(s) will be available for public inspection as provided herein.

(5) The town commission may purchase real property pursuant to this subsection by a vote of not less than five affirmative votes.

(C) *Additional procedures.* Nothing contained in this section shall be construed to prohibit or limit the town from utilizing any other procedure for the purchase of real property which may be provided by state law, including but not limited to F.S. § 166.045.

(Ord. 03-03, passed 3-3-03)(Ord. No. 2014- , - -14)

PURCHASING MANUAL

38.38 Purchasing manual changes.

The financial specialist from time to time may update or change procedures in the purchasing manual with written authorization by the town manager. Any changes to the purchasing manual shall be consistent with the provisions of this chapter. In the event of any discrepancy between the provisions of this chapter and the purchasing manual, the provisions of this chapter shall govern.

(Ord. 03-03, passed 3-3-03)
(Ord. No. 2011-27, § 19, 8-10-11)(Ord. No. 2014- , - -14)

End of Agenda Item