

M E M O R A N D U M

Date: May 12, 2015

TO: Dave Bullock, Town Manager
FROM: Susan Smith, Finance Director
SUBJECT: Ordinance 2015-18, Amending Chapter 38, Purchasing

The duties and responsibilities previously assigned to the Town's financial specialist position as designated under Chapter 38 of the Town of Longboat Key Code of Ordinances are being reassigned to a Town purchasing manager position designated by the Town Manager. As a result several amendments are necessary to change the title of the position throughout the Chapter.

These changes are contingent upon the approval of Resolution 2015-12 which provides funding for the Finance Office staff position of Purchasing Manager.

The following additional revisions are also being proposed to the Chapter:

- Section 38.26 (P) has been added to allow an exemption for the hiring of money managers for the Consolidated Retirement System. It is industry practice for money managers to be selected based on the recommendation of an investment advisor such that this professional is not solicited through a bid process.
- Modifications are proposed to Section 38.32 (C) to increase the amount of the cash deposit required for bidders filing written protests. It is recommended that the cash deposit be increased to \$2500 to bring the deposit more in line with the protest deposit fees charged by other local jurisdictions. Under the current Code the deposit fee is \$400.
- Modifications are proposed to amend Section 38.20 to allow the Town greater flexibility to request more than 100 percent for contract security.

Ordinance 2015-18 was presented to the Commission at their May 18, 2015 Regular Workshop Meeting and was forwarded to the June 1, 2015 Regular Meeting for first reading.

ORDINANCE 2015-18

AN ORDINANCE AMENDING CHAPTER 38, PURCHASING, OF THE CODE OF ORDINANCES OF THE TOWN OF LONGBOAT KEY, FLORIDA; REPLACING ALL REFERENCES TO “FINANCIAL SPECIALIST” WITH THE TERM “PURCHASING MANAGER” IN CHAPTER 38; AMENDING SECTION 38.02, DEFINITIONS; AMENDING SECTION 38.11, AUTHORITY OF THE FINANCIAL SPECIALIST; AMENDING SECTION 38.12, DELEGATION OF AUTHORITY BY THE TOWN MANAGER; AMENDING SECTION 38.13, DUTIES OF THE FINANCIAL SPECIALIST; AMENDING SECTION 38.14, ENCUMBRANCE OF FUNDS; AMENDING SECTION 38.15, DEPARTMENT HEAD PURCHASING AUTHORITY; AMENDING SECTION 38.18, PROCEDURE FOR SECURING QUOTES AND BIDS; AMENDING SECTION 38.20, BID AND CONTRACT SECURITY; AMENDING SECTION 38.22, COMPETITIVE SEALED BIDDING; AMENDING SECTION 38.23, COMPETITIVE SEALED PROPOSAL PROCESS; AMENDING SECTION 38.24, SOLE SOURCE PURCHASES; AMENDING SECTION 38.26, CONTRACTING FOR DESIGNATED PROFESSIONAL SERVICES; AMENDING SECTION 38.31, SUSPENSION AND DEBARMENT; AMENDING SECTION 38.32, PROTEST PROCEDURES; AMENDING SECTION 38.33, INSPECTION AND TEST; AMENDING SECTION 38.38, PURCHASING MANUAL CHANGES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the duties and responsibilities previously assigned to the Town’s financial specialist position as designated under Chapter 38 of the Town of Longboat Key Code of Ordinances, are being reassigned to a Town purchasing manager position; and

WHEREAS, as a result of the changes to the position several amendments to Chapter 38 have become necessary to set forth the responsibilities of the Town’s purchasing manager; and

WHEREAS, additional amendments to Chapter 38 are also needed to clarify and amend certain aspects of the Town’s purchasing procedures, including certain exemptions from the purchasing procedures relative to the consolidated retirement system board, the amount of the deposit to be submitted with a bid protest, and provisions related to contract security; and

WHEREAS, the Town Commission finds that the revisions to Chapter 38 are in the best interest of the health, safety, and welfare of the citizens of Longboat Key.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:

SECTION 1. The recitals stated above are hereby incorporated herein by reference.

SECTION 2. Chapter 38, General Provisions, subsection 38.02, is amended to read as follows:

38.02 Definitions.

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 purchasing manager ~~financial specialist~~, which shall, at a minimum, include posting public notice on the town's website and a notice in the 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.

SECTION 3. Chapter 38, Organization, subsections 38.11 through 38.15, are amended to read as follows:

38.11 Authority of the ~~financial specialist~~ purchasing manager.

- (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~~ purchasing manager as the principal purchasing official for the town. The ~~financial specialist~~ purchasing manager shall report to the finance director.
- (B) The town manager hereby designates the ~~financial specialist~~ purchasing manager 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.

38.12 Delegation of authority by the town manager.

The town manager may further delegate rights, powers, and authority vested in the ~~financial specialist~~ purchasing manager 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.

38.13 Duties of the ~~financial specialist~~ purchasing manager.

The authority of the ~~financial specialist~~ purchasing manager 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.

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~~

purchasing manager 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.

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~~ purchasing manager and the finance department for adherence to competitive and fair purchasing practices.

SECTION 4. Chapter 38, Purchasing Procedures, subsections 38.18, 38.20, 38.22 through 38.24, 38.26, and 38.31 through 38.33 are amended to read as follows:

38.18 Procedures 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~~ purchasing manager 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. The town manager shall further notify the town commission of any public works projects anticipated to exceed \$35,000.00 procured under this subsection.
- (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~~ purchasing manager. Completely documented requests for quotations shall be maintained in the finance department.
- (C) The user department, if authorized by the ~~financial specialist~~ purchasing manager, may obtain quotations from vendors independent of the finance department provided the quotations are authorized by the ~~financial specialist~~ purchasing manager 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~~ purchasing manager.

38.20 Bid and contract security.

(A) Bid security.

(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~~ purchasing manager 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.

(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 at least 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

(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 or amounts other than as specified in subsection (B) of this section.

38.22 Competitive sealed bidding.

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

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

38.23 Competitive sealed proposal process.

When it is determined and documented in writing by the using department and the ~~financial specialist~~ purchasing manager 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~~ purchasing manager may authorize the following competitive sealed proposal processes as an alternative to the competitive sealed bidding process:

- (D) *RFP/RFQ/RFI cancellation or postponement.* The ~~financial specialist~~ purchasing manager 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~~ purchasing manager shall promulgate and adopt policies regarding corrections, additions to, and withdrawal of proposals.

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~~ purchasing manager 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.

38.26 Contracting for designated professional.

- (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~~ purchasing manager, 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~~ purchasing manager, finance department, and town manager.
- (E) *Evaluator pool.* The ~~financial specialist~~ purchasing manager, 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.

(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~~ purchasing manager 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).

(P) Selection for money managers. The selection of money managers for the consolidated retirement system are exempt from the purview of this chapter. Money managers for the consolidated retirement system shall be selected based on a process recommended by the consolidated retirement system's investment advisor and approved by the consolidated retirement system's board of trustees as provided for in chapter 34 of this Code, and town shall engage each money manager subject to the town attorney or designee's review and approval as to form and legal correctness.

38.31 Suspension and debarment.

(B) *Authority.* The ~~financial specialist~~ purchasing manager 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~~ purchasing manager based upon the criteria set forth in the purchasing manual.

(E) *Decision.* After the ~~financial specialist~~ purchasing manager has determined there is cause to suspend or debar a vendor, the ~~financial specialist~~ purchasing manager shall notify the vendor in writing of the debarment or the period of suspension and the reasons for the action taken. The town manager shall notify the town commission of any decisions by the town to suspend or debar a vendor pursuant to this section.

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~~ purchasing manager. 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~~ purchasing manager prior to the applicable deadline. Protests may not be sent by e-mail or facsimile machine without the prior approval of the ~~financial specialist~~ purchasing manager. 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~~ purchasing manager 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~~ purchasing manager 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~~ purchasing manager within three (3) business days of receiving the protest. The ~~financial specialist~~ purchasing manager will promptly forward copies of any such comments and responses to the Protestor.
- (4) If the protest is sustained, the ~~financial specialist~~ purchasing manager 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~~ purchasing manager will notify the Protestor and the Interested Parties, if any, to the extent they were previously informed.

(C) *Requirements to protest.*

- (2) A formal written protest is considered filed with the town when the ~~financial specialist~~ purchasing manager 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.
- (4) Any party who files a written protest shall deposit with the ~~purchasing finance~~ department cash in the amount of ~~\$400.00~~ \$2,500.00 or an amount equal to 5% of the lowest acceptable bid, whichever is less, 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 finance~~ department is upheld, the town shall retain the ~~\$400.00~~ full amount of the deposit to defray the costs and expenses incurred considering the protest. If the protestor prevails, the protestor shall recover the cash deposit.

38.33 Inspection and test.

- (A) The ~~financial specialist~~ purchasing manager 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~~ purchasing manager to inspect deliveries made to it.
- (C) The ~~financial specialist~~ purchasing manager shall have the authority to require chemical and/or physical tests or samples submitted with bids and samples of deliveries, which are necessary to determine their quality and conformance with the specifications. For such tests, the ~~financial specialist~~ purchasing manager 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.

SECTION 5. Chapter 38, Purchasing Manual, subsection 38.38 is amended to read as follows:

38.38 Purchasing manual changes.

The ~~financial specialist~~ purchasing manager 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.

SECTION 6. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall not be affected.

SECTION 7. All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

SECTION 8. This Ordinance shall take effect upon second reading in accordance with Law and the Charter of the Town of Longboat Key.

Passed on the first reading the ____ day of _____, 2015.

Adopted on the second reading and public hearing the ____ day of _____, 2015.

Jack G. Duncan, Mayor

ATTEST:

Trish Granger, Town Clerk



End of Agenda Item