TOWN OF FORT MYERS BEACH
ORDINANCE NO. 07-01

AN ORDINANCE TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH FINANCE ORDINANCE; SETTING FORTH PURPOSE, APPLICABILITY, RESPONSIBILITY OF THE FINANCE DEPARTMENT, PROVIDING DEFINITIONS, PURCHASING PROCEDURES, VENDOR LIST AND VENDOR REGISTRATION; SPECIFICATIONS, PERFORMANCE BOND AND INSURANCE REQUIREMENTS, CONSTRUCTION CONTRACTS AND SUPPORTING DOCUMENTS, DISQUALIFICATION OF VENDORS AND BIDDERS, APPEALS AND REMEDIES, STANDARDS OF CONDUCT FOR TOWN OFFICIALS AND EMPLOYEES, REPEAL OF PRIOR FINANCE ORDINANCES; PROVIDING FOR PURCHASING POLICIES AND PROCEDURES; PROVIDING FOR CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety, and welfare and to preserve the lives and property of the people of the Town.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

Section 1. Adoption of Purchasing Policies and Procedures Manual.

The Purchasing Policies and Procedures Manual which is attached hereto as Exhibit A, and hereby incorporated by reference, is hereby adopted as the Town Finance Ordinance in its entirety

Section 2. Repeal of Prior Ordinances, Conflict and Severability.

A. Town Ordinances 96-18 and 03-02 are hereby repealed in their entirety and have no force or effect. In addition, all sections or parts of sections of any other Ordinance(s) and/or Resolution(s) of the Town in conflict herewith are hereby repealed to the extent of such conflict.

B. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity will not affect the remaining provisions that can be implemented without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

Section 3. Effective Date.

This Ordinance shall take effect immediately upon adoption by the Town.

The foregoing ordinance was enacted by the Town Council upon a motion by Vice Mayor Massucco and seconded by Council Member Shenko and, upon being put to a vote, the result was as follows:

Dennis Boback , Mayor	aye
Don Massucco, Vice Mayor	aye
Charles Meador, Jr.	aye
Garr Reynolds	aye
William Shenko, Jr.	aye

DULY PASSED AND ENACTED this 22nd day of January, 2007.

ATTEST: TOWN OF FORT MYERS BEACH

By: _____ By: _____

Michelle Mayher, Town Clerk Dennis C. Boback, Mayor

Approved as to legally sufficiency by:

_____

Anne Dalton, Town Attorney

Town of Fort Myers Beach

Memo

To: Mayor and Council member

Cc:

From: David Sallee

Date: January 3, 2007

Re: Purchasing of Goods and Services Ordinance

The Purchasing of Goods and Services Ordinance is one of the policies where I believe further clarification of procedures will benefit and protect the Town. As a quick overview of the ordinance, all purchases of goods and services are processed through the Finance Department with oversight by the Town Manager. The threshold dollar amount that send purchases to the Town Council has not been changed, but the procedures and requirements are more detailed.

The general groupings of purchases covered are:

- Competitive sealed bids above $25,000;
- Non-sealed bids and quotes;
- Sole source and emergency purchases;
- Purchases made through other governmental entities' existing contracts (piggyback contracts);
- Cooperative purchasing arrangements; and
- Competitive negotiation for professional services.

The last item introduces the use of the Selection Advisory Committee, consisting of senior staff, which evaluates and, after Council's approval of a preferred firm, negotiates a professional services contract for Council's final approval. In my experience, the inclusion of department directors other than the department bidding the item broadens the perspective, questions and range of experience, which leads to a better selection process. I have used this process in various sized cities with much success. Additionally, guidelines for specifications (including the use of brand names), construction contract requirements, disqualification and appeal procedure, and standard of conduct for those involved in this process are introduced or clarified. If you have questions, please ask me. Thank you.

PURCHASING OF GOODS AND SERVICES

TABLE OF CONTENTS

SECTION	DESCRIPTION	PAGE
1	Purpose	1
2	Applicability	1
3	Responsibility of the Finance Department	1
4	Definitions	1
5	Purchasing Procedures	3
6	Vendor List and Vendor Registration	12
7	Specifications	13
8	Performance Bond and Insurance Requirements	14
9	Construction Contracts and Supporting Documents	14
10	Disqualification of Vendors and Bidders	16
11	Appeals and Remedies	17
12	Standards of Conduct for City Officials and Employees	19

PURCHASING OF GOODS AND SERVICES

Section 1. Purpose.

The purpose of these sections is to provide for a fair and equitable method of administering purchases of goods and services in order to maximize the purchasing value of public funds and to provide procedures and guidelines governing said purchases.

Section 2. Applicability.

This Ordinance applies to all purchases of supplies and services, and construction by the Town of Fort Myers Beach as of the effective date. In the event of a conflict between the provisions of this Ordinance and any applicable state or federal law or the Town Charter, the latter shall prevail.

Section 3. Responsibilities of the Finance Department.

A. All purchases of goods and services shall be processed through the Finance Department. The Finance Department is authorized to promulgate procedures for the requisition of supplies and services.

B. For purchases of $500 or more, the Finance Department shall certify that the purchase request has sufficient unencumbered funds to cover the purchase, or a transfer is in process for the approval by the Town Manager or his/her designee

Section 4. Definitions.

A. "Brand Name or Equal Specification" means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the Town's requirements, and which provides for the submission of equivalent products.

B. "Brand Name Specification" means a specification limited to one or more items by manufacturers' names or catalog numbers.

C. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity currently licensed to do business in the State of Florida and doing business in the State of Florida.

D. "Change Order" means a written change to a contract after the contract has been awarded.

E. "Town Official" means any Town Council Member, the Mayor or any other person who is elected to fill a position with the Town of Fort Myers Beach.

F. "Confidential Information" means any information which is available to any employee only because of the employee's status as an employee of the Town and is not a matter of public knowledge or available to the public on request.

G. "Construction" means the process of building, altering, repairing, improving, or demolishing any structure or building, or other public improvement of any kind to any structure or building, or other public improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

H. "Contract" means all types of Town agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.

I. "Equipment" means all property, including but not limited to, Town capitalized equipment.

J. "Firm" or "Vendor" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, association, or any other legal entity, currently licensed to do business in the State of Florida and doing business in the State of Florida.

K. "Indirect" or "Indirect Interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the employee or Town official.

L. "Material Interest" means direct ~~of~~ or indirect ownership of more than five percent (5%) of the total assets or capital stock of any business or firm.

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

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

O. "Request for Qualifications" (RFQ) means all documents, whether attached or incorporated by reference, utilized by the Town for soliciting statements of qualifications under the Consultants Competitive Negotiations Act or otherwise.

P. "Responsible Offeror" means a person or firm who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance of the contract.

Q. "Responsive Bidder" means a person or firm who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

R. "Selection Advisory Committee" means a committee of staff members and contracted professionals of the Town who evaluate and negotiate professional service contracts for submittal to Council for approval.

S. "Sole Source" means only one (1) available source for supply, equipment, service or construction items.

T. "Specification" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

U. "Supplies" means property, including but not limited to materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Section 5. Purchasing Procedures.

A. Competitive Sealed Bidding.

1. Applicability. Except as otherwise authorized herein, all contracts for the purchase of goods or contractual services in excess of $25,000 within a fiscal year shall be awarded by competitive sealed bid.

2. Invitation to Bid. For all purchases subject to competitive bidding, the Finance Department, with assistance ~~for~~ from the affected department(s), shall issue an Invitation for Bids which includes specification, and all contractual terms and conditions applicable to the anticipated purchase. In the event of any conflict between the Invitation for Bids and this Ordinance, the provisions of this Ordinance shall prevail.

3. Addenda. After an Invitation to Bid is issued and before the bid opening, the affected department and/or the Finance Department may issue one or more written addenda for the purpose of clarifying specifications or other matters relating to the bid.

4. Public Notice. All Invitation to Bids shall be published at least once in a newspaper of general circulation in the Town for a minimum of fourteen (14) days preceding the last day set for the opening of bids. The public notice shall state the place, date, and time of the bid opening; a general description of the subject matte of the bid, and where bid forms and specifications may be obtained.

5. Bid Bond. The Invitation to Bids may specify that a form of bid security, as a guarantee that all provisions of the specifications shall be met, is required. The bid bond shall provide that if the bid is: (a) rejected by the Town, or (b) accepted and the bidder executes the contract and furnishes an appropriate bond, then the bid bond is void. Otherwise it remains in full force and effect. The security may be in the form of a certified check,

a cashier's check, treasurer's check or bank draft of any national or state bank made payable solely to the Town. No third-party endorsed payments are acceptable for this purpose. If the Town permits a bidder to withdraw its bid, no action shall be taken against the bidder or the bid security.

6. Bid Opening. Bids shall be opened publicly at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as the Finance Director deems appropriate, together with the name of each bidder shall be recorded and shall be available for public inspection. Bid openings shall be scheduled a minimum of fourteen (14) days after the date ~~of~~ that the Invitation for Bids is advertised.

7. Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as may be authorized in this Ordinance. All bids shall be deemed to be held open and shall be irrevocable for the time period set forth in the Invitation for Bids. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered as part of the evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the Invitation for Bids.

8. Bid Mistakes. Mistakes discovered before the bids are opened may be modified or withdrawn by sealed written notice from the Bidder of the modification or withdrawal received in the office designated in the Invitation for Bids prior to the time set for bid opening.

9. Bid Withdrawal. After bids are opened, corrections or modification to bids are not permitted, but a bidder may be permitted to withdraw an erroneous bid, prior to the bid award by the Town, if the following is established to the satisfaction of the Town, in the Town's sole judgment:

   (a) That the bidder acted in good faith in submitting the bid;

   (b) That in preparing the bid there was an error of such magnitude that enforcement of the bid would work severe hardship upon the bidder;

   (c) That the error was not the result of gross negligence or willful inattention on the part of the bidder;

(d) That the error was discovered and communicated to the Town within eight (8) business hours of bid opening, along with a written request for permission to withdraw the bid; and

(e) The bidder submits documentation acceptable to the Town and an explanation of how the bidding error was made.

10. Bid Award. All bids shall be awarded by Town as soon as practical after the bids are opened. Bids shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The Town reserves the right to reject any and all bids and to waiver minor irregularities in an otherwise valid bid. A minor irregularity is a variation from the bid invitation which does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by the other bidders, or does not adversely impact the interests of the Town. In the event the lowest responsive and responsible bid for a construction project exceeds available funds as certified by the Finance Director, and such bid does not exceed such funds by more than ten percent (10%), the Town Manager is authorized, when time or economic considerations preclude re-solicitation of work of reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be obtained only by eliminating independent deductive items specified in the Invitation for Bids.

11. Tie Bids. In the event two (2) or more bids are equal with respect to price, quality and service, preference will be given in the following order:

(a) The bidder who has its principal place of business in the Town of Fort Myers Beach, Florida.

(b) The bidder who has its principal place of business in Lee County, Florida.

(c) The bidder who has its principal place of business in the State of Florida.

B. Small Purchases.

1. Applicability. Any purchase of $25,000 or less may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section. Any purchase in excess of $25,000 shall be approved by Town Council.

2. Purchases over $4,000 and Not Greater Than $25,000. For smaller purchases of $4,000 and over, no less than three (3) written quotations

shall be obtained, if available. The award shall be made by the Department Director and Town Manager, with review by the Finance Director, to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained in the Town's records. For items purchased on an ongoing basis, contracts shall not be for a term in excess of two (2) years without obtaining new quotations to determine if the price is still the lowest.

3. Purchases Over $500 and Not Greater than $4,000. For purchases which are greater than $500 but less than $4,000, a minimum of three (3) verbal, telephone, facsimile or electronic quotations shall be obtained, if available. The award shall be made by the Department Director to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained in the Town's records.

4. Purchases for $500 and Under. For purchases for $500 and under, one (1) verbal quotation is required, provided the quotation is fair and reasonable as determined by the Department Director.

C. Sole Source Purchases.

A contract may be awarded without competition when the Finance Director, in conjunction with the Department Director determines, in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, equipment, service, or construction item. The requisitioning department shall submit to the Finance Department written justification as to why there is only one (1) source. The Town Manager or his/her designee shall conduct negotiations, as appropriate, as to price, delivery, and terms. The contract must be approved by the Town Manager. A record of sole source purchases shall be maintained by the Town Finance Department and shall list the vendor's ongoing basis. Sole source contracts shall not be automatically renewed. The Finance Director, in conjunction with the Department Director at the beginning of each fiscal year, shall determine whether the item is still only available from a sole source. If additional sources are discovered, then bids or quotations shall be obtained before the item is purchased under a new contract. All sole source purchases of $20,000 or more shall be approved by Town Council.

D. Emergency Purchases.

Notwithstanding any other provisions of this Regulation, The Town Manager or his/her designee may make, or authorize others to make, emergency purchases of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency purchases shall be made with such competition as is practicable under the circumstances. The Director of the affected department shall notify the Town Manager, who shall certify the threat to public health, welfare or safety in writing and authorize the purchase of

the needed items(s). The Director shall send a requisition to the Finance Department, together with a written explanation of the basis for the emergency purchase. The Town Manager or his/her designee shall approve all emergency requisitions. Any emergency purchase in excess of $25,000 must be approved by the Town Council as soon as practicable after the purchase.

E. Purchases from Other Governmental Entities.

Purchases of goods from the Federal Government, any State or political subdivision thereof, or any municipality are exempt from the requirements of this Ordinance. Any individual purchases in an amount over $25,000 must be approved by Town Council.

F. Purchases of Goods from Contracts Awarded by Other Governmental Entities by Competitive Bid.

The purchase of goods under a contract awarded by another governmental entity is authorized provided the Finance Director makes a written determination that time and expense factors make it financially advantageous for the Town to do so. In making that determination, the Finance Director shall consider the number of bids so solicited by the other governmental entity and whether the Town's Vendor list includes entities that did not submit a bid to such other entity. Contract(s) awarded by another governmental entity which exceed $25,000 must be approved by Town Council.

G. Cooperative Purchasing.

The Finance Department may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any goods, services or construction with one (1) or more other governmental units. Cooperative purchasing agreements shall be authorized pursuant to an Inter-local Agreement approved by Town Council and executed by all participating governmental units.

H. Competitive Negotiation for Professional Services.

1. Applicability. Contracts for professional services consisting of architecture, professional engineering, landscape architecture, or registered land surveying shall be competitively negotiated in accordance with the requirements of Section 287.055, Florida Statutes (the "Consultant's Competitive Negotiation Act" or "CCNA")

2. Public Notice and Qualification Procedures.

   (a) The Town Clerk shall publish, in a newspaper of general circulation, as such is defined in Florida Statute, a notice on each occasion when professional services are required to be purchased for a project whose projected basic construction cost is estimated by the Town to be in excess of Two Hundred Fifty Thousand Dollars ($250,000), or for planning or study activities

when the fee for professional services is in excess of Twenty Five Thousand Dollars ($25,000), other than as permitted by the CCNA. The notice shall include a general description of the project, shall indicate how interested parties may apply for consideration and the closing date for receipt of proposals, and contain such other information as the Town deems pertinent. Publications of statewide and national distribution may be utilized for such notices when the magnitude of the project so merits in the Town's discretion. The submission deadline shall be a minimum of thirty (30) days after the date the RFQ ~~RFP~~ is first published.

(b) Addenda. After a Request for Qualifications is issued and before the submission deadline, the Finance Department, with assistance from the affected department, may issue one (1) or more written addenda for the purpose of clarifying specifications or providing further information or other matters relating to the RFQ.

(c) Any firm or individual desiring to provide professional services to the Town must first be certified by the Town as qualified pursuant to law and the regulations of the Town. The Town shall make a finding that the firm(s) or individual(s) to be employed is fully qualified to render the required service. The factors to be considered include but are not limited to the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

(d) Certification. All individuals or firms desiring to be certified to provide professional services shall submit a full statement of their qualifications. Those qualifications shall be reviewed by the "Selection Advisory Committee."

3. Selection Advisory Committee.

(a) The Selection Advisory Committee is hereby established for the purpose of evaluating firms who express interest in contracting with the City for consultant services on a project. The Selection Advisory Committee may consist of: the Town Manager, the Finance Director, the Public Works Director or his/her designee, and the Community Development Director or his/her designee. All meetings of the Selection Advisory Committee shall be open to the public and notices containing the date, time, place and purpose of all Selection Advisory Committee meetings shall be conspicuously posted in Town Hall. All minutes of the meetings of the Selection Advisory Committee shall be promptly recorded and such records shall be open to public inspection.

(b) The Department Director shall prepare, with the assistance of the Finance Director, and review with the Town Manager or his/her designee, a request for Qualification and send it to the firms on file with the Town, a newspaper of general circulation in the Town, and other distribution sources as determined by the Town. The request shall include:

(1) A delineation of the required scope of services. The description shall be sufficient to assure that all firms have the same understanding of the requested basic services.

(2) A request for specific and general information on how the firm will proceed with the project.

3) Specific instructions on how, when and where the proposal shall be submitted.

(4) A requirement that the proposal be submitted as a sealed package. The proposer shall submit a project price ina separate sealed envelope, clearly marked as "Project Price", which envelope shall not be opened unless the proposer is selected by the Town to engage in negotiations.

(c) After the date for submittal, the Selection Advisory Committee shall open and review the proposals. The Committee shall evaluate each firm's qualifications based on past experience, expressed understanding of the project and proposed method of handling of the project. After evaluation, the Committee shall present the Town Manager with a list, in order of preference, of no fewer than three (3) firms deemed to be the most highly qualified to perform the required services, unless noted above. The Town Manager, after review, shall forward a similar list to the Town Council. If no more than two (2) firms submit proposals, the decision will be made by the Town Manager to proceed with only two (2) based on availability of alternatives and qualifications. In determining whether a firm is qualified, the Committee shall consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm. The Selection Advisory Committee shall not request, accept, or consider proposals for compensation to be paid under the contract, except as set forth in (b) above.

(e) The Town Council shall carefully consider the recommendation of the Town Manager and shall review the qualifications of the firms and shall vote to accept or reject the ranking of the firms

by the Town Manager. After the ranking of the firms has been aceepted by the Town Council, they shall direct the Selection Advisory Committee to initiate negotiations with the number one ranked firm. The Town Council can reject the ranking order recommended by the Town Manager. If so, the Town Council shall interview and rank the applicant(s).

(f) The Town Manager and the Selection Advisory Committee shall negotiate a contract with the most qualified firm for professional services at compensation which the Committee determines is fair, competitive, reasonable and for which funds are available. In making such determination, the Committee shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For any lump-sum or cost-plus-a-fixed-fee contract in excess of $60,000, the firm receiving the contract shall execute a truth-in-negotiation certificate confirming that wage rates and other unit costs are accurate, complete and correct. The Contract shall also contain language that the original contract price and any additions thereto will be adjusted to exclude any significant sums which the Town determines the contract price was increased due to inaccurate, incomplete, or not-current wage rates and unit costs.

(g) If the Selection Advisory Committee is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm shall be formally terminated and the Selection Advisory Committee shall undertake negotiations with the second ranked firm. If the Selection Advisory Committee fails to reach an agreement with the second ranked firm, negotiations with the third ranked firm shall be undertaken. If the Selection Advisory Committee is unable to negotiate a satisfactory contract with any of the selected firms, the Selection Advisory Committee shall select additional firms in the order of their competence and qualification and submit them to Council for determination or reissue the Request for Qualifications and continue selection and negotiations as specified in this Ordinance until an agreement is reached.

4. **Council Approval.** The Town Manager shall submit the negotiated contract to the Town Attorney for review and shall then submit the contract to the Town Council for approval.

5. **Prohibition against Contingent Fees.** Each contract entered into by the Town for professional services shall contain a prohibition against contingent fees as follows: "The architect (or registered land surveyor or professional engineer, as applicable) warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor or

professional engineer, as applicable) nor offered any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the Town shall have the right to terminate the agreement without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

6. **Reuse of Existing Plans.** There shall be no public notice requirement or utilization of the selection process for projects in which the Town is able to reuse existing plans from a prior project. However, with plans which the Town intends to reuse at some future time, the original public notice must contain a statement that the plans are subject to reuse in accordance with Section 287.055(11) Florida Statutes.

7. **Exception to CCNA Process - Emergencies.** Under emergencies as defined by F.S. 287.055, the procedure set forth in such statute shall be followed and shall supercede anything to the contrary set forth in this section H.

8. **Exception to CCNA Process – Continuing Contracts.** In the event that the continuing contract provisions of F.S. 287.055 apply to acquisition of professional services, the procedure set forth in such statute shall be followed and shall supercede anything to contrary set forth in this section H.

I. Contracting for Goods and/or Services through a Request for Proposals.

1. Applicability. Contracts for goods and/or services, which are not subject to the Consultant's Competitive Negotiation Act and for which uniform detailed specifications cannot be provided, may be obtained in accordance with this section. At the option of the Town Manager, said contracts may be negotiated by utilizing the Selection Advisory Committee as specified in Section 3 ~~(a)~~ above.

2. Addendum. After a Request for Proposals is issued and before the submission deadline, the Finance Department may issue one or more written addenda for the purpose of clarifying specifications or other matters relating to the RFP.

3. Statement of Qualifications. Persons and firms interested in providing goods and/or services to the Town in response to an RFP issued pursuant to this Section may submit statements of qualification and expressions of interest in providing such goods and/or services.

4. Public Announcement and Request for Proposals. The Town shall provide reasonable notice of the need for such goods and/or

services through a Request for Proposals (RFP). The RFP shall describe the goods and/or services required, list the types of information and data required of each offeror, and state the relative importance of particular specifications or qualifications.

5. Discussions. The Town Manager or the Selection Advisory Committee may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration.

6. Award. Proposed Awards above $25,000 shall be forwarded by the Town Manager to be made by the Town Council to the offeror determined to be best qualified based on the evaluation factors set forth in the RFP, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offer(s), in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.

7. Nothing in this Ordinance shall be construed to prevent the hiring of expert witnesses and other professionals necessary to assist the Town Manager or Town Attorney in representing the Town, but such hiring shall be subject to Council approval.

J. Cancellation of Invitation for Bids or Request for Proposals.

1. An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part with or without cause. The following shall be considered good cause for rejection of all bids:

   (a) All bids exceed the estimated or budgeted amount.

   (b) The specifications contain an error which causes confusion and misunderstanding among bidders.

   (c) The item(s) or services(s) are no longer needed.

   (d) Lack of adequate competition.

2. Notice of cancellation shall be sent to all businesses solicited or submitting bids.

Section 6. Vendor List and Vendor Registration.

A. **Vendor List.** The Finance Department shall maintain a "Vendor List" of Vendors who desire to receive Invitations of Bids and/or Requests for Proposals by mail. A vendor shall submit a written request on the firm's letterhead to the Purchasing Agent indicating a desire to be placed on the Town's "Vendor List". Town Council may establish a fee to be charged to vendors on the list to defray the cost of mailing the bid invitations and RFPs, if they so desire to cover administrative costs.

B. **Vendor Registration.** Any vendor who submits a bid or proposal must be registered with the Town and must complete a "Public Entity Crimes Statement". All vendors shall also complete a vendor application form provided by the Town which includes the following information. The vendor shall update such registration on at least an annual basis.

(1) Location of the business.

(2) Type of business and the equipment, supplies or service offered.

(3) Names of all officers of the business and names of those persons authorized to sign bids for the firm.

(4) Financial information demonstrating the ability of the business to perform any contracts which may be awarded.

(5) Name and address of the nearest representative of the business.

(6) Length of time the business has existed and any references it may wish to provide.

C. **Removal from Vendor List and Re-registration.** Any vendor who does not respond to three (3) consecutive formal bids may be removed from the "Vendor List" and must re-register prior to being permitted to submit future bids.

Section 7. Specifications.

A. **General.** All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the Town's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including, but not limited to, those prepared for the Town by architects, engineers, designers, and draftsmen.

B. **Brand Name or Equal Specification.**

(1) Use. Brand Name or Equal specifications may be used when the Department Director and Finance Director determines in writing that:

(a) No other design or performance specification or qualified products list is available;

(b) Time does not permit the preparation of another form of purchase description, not including a brand name specification;

(c) The nature of the product or nature of the Town's requirements makes use of a brand name or equal specification suitable; or

(d) Use of a brand name or equal specification is in the Town's best interest.

(2) Designation of Several Brand Names. Brand name or equal specifications shall seek to designate three (3), or as many different brands as practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(3) Required Characteristics. Unless the Finance Director and the affected Department Director determine in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(4) Nonrestrictive Use of Brand Name or Equal Specifications. When a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

C. Brand Name Specification.

(1) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the Finance Director makes a written determination that only the identified brand name item(s) will satisfy the Town's needs.

(2) Competition. The Finance Director, in conjunction with the Department Director, shall seek to identify sources from which the designated brand name item(s) can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the purchase shall be made in accordance with Section 5-C (Sole Source Purchases).

Section 8. Performance Bond and Insurance Requirements.

The Finance Director shall require a public construction bond for all contracts listed in Section 5-C (Sole Source Purchases) and may require a performance bond and/or evidence of sufficient insurance for other contracts when necessary to protect the Town.

Section 9. Construction Contracts and Supporting Documents.

A. **Construction Contracts.** All construction contracts shall be reviewed by the Town Attorney and shall be executed by the Mayor and Town Clerk and by either the President or Vice-President of the contractor. Other signatories may sign on behalf of the contractor provided there is an attached certified copy of a corporation resolution authorizing that person to sign. The corporate seal of the contractor shall be affixed to the contract and a copy of such submitted with the bid.

B. **Insurance.** All construction contracts shall be accompanied by a certificate of insurance indicating coverage in the amounts required by the bid specifications and shall name the Town of Fort Myers Beach as an additional insured, not just a certificate of holder.

C. **Public Construction Bond.** Any person entering into a contract for the construction of a public building or public work, or for repairs upon a public building or a public work shall, before commencing work, execute, deliver to the town, and record in the Public Records of Lee County, Florida, a public construction bond issued by a surety authorized to do business in the State of Florida.

(1) Form. The bond shall be in substantially the following form:

PUBLIC CONSTRUCTION BOND

BY THIS BOND, We, ,as Principal and , a corporation, as Surety, are bound to the Town of Fort Myers Beach, herein called Owner, in the sum of $, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated , between Principal and Owner for construction of ,the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract; and

2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract: and

3. Pays Owner all losses, damages, expenses, costs and attorney's fees, including appellate proceedings that owner sustains because of default by Principal under the contract; and

4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force,

Any changes in or under the contract documents and compliance or non-compliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

DATED ON _____ _____
Name of Principal

BY _____ (As Attorney in Fact)
_____ (Name of Surety

D. **Waiver of Bond.** Town Council may waive the public construction bond requirement for project with a total contract amount of $200,000 or less.

E. **Alternative for of Security.** In lieu of a public construction bond, a contractor may file with the Town an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in Part II of Chapter 652, Florida Statutes. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the public construction bond. The determination of the value of an alternative form of security shall be made by the Town.

F. **Change Orders.** No work outside the scope of the original contract shall be performed prior to approval of a change order by the Town Council, provided, however, that Town Council may delegate this authority, up to a specified amount, for contracts where Council approval of all change orders would hinder or delay work progress. This does not include contingency changes with a contract which fall within the contingency amount of that contract. These are approved by the Department Director and Town Manager.

Section 10. Disqualification of Vendors and Bidders.

A. **Procedure for Disqualification.** After reasonable notice to the person or firm involved and a reasonable opportunity for the person or firm to respond, the Town Manager is authorized to disqualify that person or firm for cause from consideration for award of contracts. The disqualification shall be for a period of not more than four (4) years.

B. **Grounds for Disqualification.** Grounds for disqualification include, but are not limited to:

(1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating alack of business integrity or business honesty which currently, seriously, and directly affects the person or firm's ability to perform work for the Town;

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) Deliberate failure without good cause to perform in accordance with contract specifications or within the time limit provided in a contract;

(5) Financial irresponsibility;

(6) Unethical conduct;

(7) Disciplinary action against the person or firm's professional or contractor's license; or

(8) Findings under Bid Protest that the firm acted fraudulently or in bad faith.

C. **Notice of Decision.** A copy of a decision to disqualify shall be mailed to the affected person or firm by certified mail, return receipt requested.

D. **Appeal.** Any person or firm who is disqualified may appeal the decision to the Town Council, provided a Notice of Appeal is filed within thirty (30) days of the date the decision to disqualify is rendered.

Section 11. Appeals and Remedies.

A. **Bid Protests.**

(1) Right to Protest. Any person or firm who is affected adversely by the Town's decision may protest to the Town Council.

(2) Time Limits and Form of Protest. A protest with respect to an Invitation for Bids or Request for Proposals shall be submitted in writing to the Town Clerk prior to the opening of bids or the closing date of proposals. A protest of a bid shall be filed with the Town Clerk within seventy-two (72) calendar hours (excluding Saturday, Sundays, and Legal Holidays) after the posting of the bid tabulation or after receipt of the Notice of Award or Notice of intent to award the contract, whichever is later. A formal written protest shall be filed within ten (10) days after the filing

of the initial written Notice of Protest. The formal written protest shall state with particularity the fact and law upon which the protest is based. Failure to file a Notice of Protest or failure to file a formal written protest with the time limits proscribed herein shall constitute a waiver of the right to protest. The person or firm shall post a bond, payable to the Town of Fort Myers Beach in an amount equal to five percent (5%) of the total bid or Twenty Thousand Dollars ($20,000), which ever is greater, but not to exceed the value of the bid. Said bond shall be designated and held for payment of any costs that may be levied against the protesting entity by the Town of Fort Myers Beach as a result of a frivolous protest.

(3) Hearing. If the subject of a protest is not resolved by mutual agreement within fourteen (14) days after receipt of a formal written protest, the matter may, at the option of the Town Council, be referred to a hearing officer who shall conduct a hearing within fifteen (15) days of receipt of the formal written protest. The hearing officer shall render a recommended order within thirty (30) days after the hearing. The recommended order shall be scheduled on the next Council agenda for final action. If Council so elects, the protest may be heard directly by the Town Council.

(4) Stay of Action. Upon receipt of a formal written protest which has been timely filed, the Town shall stop the bid solicitation process or the contract award process until the subject of the protest is resolved either informally or by Town Council action, unless the Town Manager sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(5) Decision. If a protest is denied, the bidder or offeror shall have thirty (30) days to file for relief in Circuit Court in Lee County, Florida.

B. Remedies for Solicitations or Awards in Violation of Law.

(1) Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or closing date for receipt of proposals, the Finance Director and the affected Department Director, after consultation with the Town Manager and Town Attorney, determines that a solicitation is in violation of federal, state or municipal law, then the solicitation shall be cancelled or revised to comply with applicable law.

(2) Prior to Award. If after bid opening or the closing date for receipt of proposals, the Finance Director and the affected Department Director, after consultation with the Town Manager and Town Attorney, determines that a solicitation or proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be cancelled.

(3) After Award. If, after an award, the Finance Director and the affected Department Director, after consultation with the Town Manager and Town attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:

(a) If the person or firm awarded the contract has not acted fraudulently or in bad faith:

(i) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Town; or

(ii) The contract may be terminated and the person awarded the contract shall be compensated for any costs reasonably incurred under the contract, plus a reasonable amount for overhead, prior to the termination; or

(b) If the person or firm awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interest of the Town.

Section 12. Standard of Conduct for Town Officials and Employees.

A. **Failure to Follow Proper Purchasing Procedures.** It shall be a violation of this section for any employee to order, contract for, or purchase any materials, supplies, or services except in strict compliance with all purchasing procedures as provided herein or as established by the Finance Department.

B. **Solicitation or Acceptance of Gifts.** No Town official or employee shall solicit or accept anything of value from any vendor or bidder, including gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the actions of said official or employee would be influenced thereby.

C. **Doing Business with the Town.** No employee or public official acting in his/her official capacity shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for the Town from any business entity or which he/she or his/her spouse or child is an officer, partner, director, or proprietor or in which such official or employee or his/her spouse or child, or any combination of them, has a material interest. No Town official or employee, acting in a private capacity, shall rent, lease, or sell any realty, goods, or services to the Town.

D. **Unauthorized Compensation.** No Town official or employee or his/her spouse or minor child shall, at any time, accept any compensation payment, or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his/her official capacity.

E. **Conflicting Employment or Contractual Relationship.** No Town official or employee shall have or hold any employment or contractual relationship with any business entity which is doing business with the Town, provided however, that this section shall not be construed to prevent any officer of employee from accepting any other employment or following any pursuit which does not interfere with the full and faithful discharge of the officer or employee's duties in his/her employment with the Town.

F. **Contingent Fees.** No Town official or employee shall be retained, or shall retain a person, to solicit or secure a Town contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

G. **Confidential Information.** No Town official or employee shall disclose or use any information not available to members of the general public and gained by reason of his/her official position for his/her personal gain or benefit of any other person or business entity.

H. **Penalties.** Violation of any provision of this section may subject the officer or employee to discipline in the form of one or more of the following:

(1) In the case of a Town Official:

(i) Forfeiture of office as provided in the Town Charter.

(ii) Restitution of any pecuniary benefit received because of the violation committed.

(2) In the case of a Town employee:

(i) Dismissal from employment, provided that if the employee is found guilty of willful violation, then dismissal from employment shall be mandatory.

(ii) Suspension from employment for not more than ninety (90) days without pay.

(iii) Demotion.

(iv) Reduction in salary level.

(v) Oral or written reprimands or warnings.

Any discipline imposed shall be subject to the Town's personnel rules.

I. **Contracts Voidable.** If a violation of any of the prohibitions contained in this section occurs, then the contract involved may, at the option of the Town, be declared null and void or voidable.