

ORDINANCE 2022-03

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING CHAPTER 2, ARTICLE V, REPEALING SECTION 2-101 IN ITS ENTIRETY AND REPLACING WITH A NEW SECTION 2-101 THROUGH 2-116 PROVIDING FOR POLICIES AND PROCEDURES RELATED TO ALL ASPECTS OF THE PROCUREMENT PROCESS; PROVIDING FOR DELEGATION OF DUTIES, PROVIDING FOR SUPERVISION, RESPONSIBILITY AND AUTHORITY; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council desires to update the Code of Ordinances relating to purchasing providing procurement steps, approval processes, authority, delegation of duties and responsibilities and codifying them for staff guidance; and,

WHEREAS, the Town Council desires to provide for consistent procedures for purchasing for Town needs; and,

WHEREAS, it's the intent of the Town Council to supplement the Town Code and state law and to provide a system of due process regarding the procedures herein to provide consistent processes throughout all Town Departments; and,

WHEREAS, the Town Council desires to provide authority to the Town Manager for general supervision of the purchasing and contracts duty and shall act as the principal purchasing officer for the Town with the financial process duties of the procurement process assigned to the Town Clerk/Treasurer; and,

WHEREAS, the Town Council desires to provide methods of source selection and processes for all purchasing contracts of the Town involving dollar amounts in excess of the threshold for purchasing Category one, as defined in F.S. 287.017, or Competitive sealed bidding, electronic auctions/reverse auctions, Competitive sealed proposals (request for proposals), Invitation to negotiate; and

WHEREAS, the Town Council desires to provide in these regulations outlines for the advisory selection committee to follow when evaluating firms who express interest in contracting with the Town for professional services for projects subject to the requirements of the Consultants' Competitive Negotiations Act (CCNA) per F.S. 287.055; and

WHEREAS, the Town Council desires to establish purchasing levels based on a specific threshold value for any procurement not required to be conducted pursuant to the terms and conditions of Section 2-106 of this Code, ("Methods of Source Selection") shall be made in accordance with the operation procedures and thresholds for informal small purchases; and

WHEREAS, the Town Council desires to provide for specific exclusions and exceptions to bid, proposal or quote requirements to include sole source solicitations; provide for emergency purchase that are not a result of an emergency declaration, cooperative purchasing, purchases from other governmental entities, purchases of goods or services from contracts awarded by other governmental or not-for-profit entities by formal competitive selections process, professional services, owner direct purchase and Waiver of procurement procedures

WHEREAS, the Town Council intends to include requirements for bonds and security requirements, insurance requirements, types of contracts and contract administration, specifications for requisition, appeals and remedies, authority to debar or suspend, and ethics in public contracting.

WHEREAS, the Town Council intends to include requirements for donations to be approved by Council.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Malabar, Brevard County, Florida:

SECTION 1. A new Section 2-101 through 2-116 is hereby added to Chapter 2, Article V, Purchasing, of the Code of Ordinances of the Town to read as follows:

Chapter 2 – ADMINISTRATION

“ARTICLE V. PROCUREMENT CODE

Sec. 2-101. Title.

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

Sec. 2-102. Purpose and intent.

- (a) *General.* This article applies to all purchases of supplies, services, and construction by the Town except as provided herein.
- (b) *Purpose and intent.* The purpose and intent of this article shall be to generally prescribe the manner in which the Town shall control the purchase of materials, supplies, equipment and certain contractual services. This article shall be construed and applied to promote its underlying purposes. The underlying purposes are:
 - (1) To obtain the supplies, services and construction required by Town departments in order for those departments in a cost effective and responsive manner to better serve the Town's residents and businesses;
 - (2) To uphold the highest standards and best practices through the adoption and adherence with the public procurement profession values and guiding principles of accountability, ethics, impartiality, professionalism, service and transparency;
 - (3) To provide fair and equitable treatment of all persons who transact business with the Town;

- (4) To maximize the purchasing value of public funds in the procurement of goods and services;
 - (5) To provide safeguards for the quality and integrity of the Town's maintenance of a procurement;
 - (6) To maintain a high ethical standard for all officers and employees of the Town in connection therewith; and
 - (7) To require all parties involved in the negotiation, performance, or administration of Town contracts to act in good faith.
- (c) *Contracts to which this article is applicable.* This article applies only to contracts solicited or entered into after the effective date of this article. Nothing in this article shall be construed to prohibit the Town from complying with the terms of a grant, gift, or cooperative agreement.
 - (d) *Supplementary general principles of law applicable.* Unless displaced by the particular provisions of this Code, the principles of law and equity, including the Uniform Commercial Code of the State of Florida shall supplement the provisions of this article.
 - (e) *Severability.* If any provision of this Code or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.
 - (f) *Determinations.* Written determinations required by this Code shall be retained in the appropriate official contract file of the Town.
 - (g) *Public access to procurement information.* Procurement information shall be a public record to the extent permitted by Florida statute as amended from time to time and shall be available to the public as provided in such statute.
 - (h) *Authorization for the use of electronic transmissions.* The use of electronic media, including acceptance of electronic signatures, is authorized consistent with State of Florida applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:
 - (1) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
 - (2) Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

Sec. 2-103. Definitions.

The words defined in this section shall have the meanings set forth below whenever they appear in this Code, unless:

- (1) The context in which they are used clearly requires a different meaning; or
- (2) A different definition is prescribed for a particular article or provision.

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

Administrative policy means a formal written policy or procedural guideline which governs the operational process for carrying out various fiduciary functions of government on a Town-wide basis. Administrative policies are approved and issued by the Town Manager.

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

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

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

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

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

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

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

Category one means the dollar threshold defined by F.S. § 287.017 (1), which may be amended by the State of Florida from time to time; which shall serve as the formal solicitation threshold for purchases made on behalf of the Town of Malabar. In the event that the State of Florida amends the Category one threshold, such change shall be reported to the Town Council and the Town Council shall be required to formally consent to such change prior to such new threshold becoming effective for the Town.

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

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

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

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

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

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

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

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

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

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

Data means recorded information, regardless of form or characteristic.

Debarment means the disqualification of a person to receive solicitations or the award of contracts by the Town for a specified period of time commensurate with the gravity of the offense or the failure or inadequacy of performance.

Design-bid-build means a construction project delivery method in which the Town sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.

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

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

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

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

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

Governmental body means any unit or association of units of federal, state or local government, any public authority which has the power to tax, any other public entity created by

statute and any other entity which expends public funds for the procurement of supplies, services or construction.

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

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

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

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

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

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

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

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

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

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

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

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

Responsible bidder or offeror means a person, business or contractor who has the capability in all respects to fully perform the contract requirements and the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and record of timely and acceptable past performance that will assure good faith performance for a Town project or purchase.

Responsive bidder or offeror means a person, business or contractor whose response to a bid or proposal substantially conforms in all material respects to the requirements and criteria set forth in the invitation or solicitation. This includes such aspects as following bid instructions for proper submittal, completing all necessary forms included with the solicitation, providing information required by the solicitation, and complying with all terms, conditions and specification requirements as enumerated in the solicitation.

Reverse auction means a procurement method wherein bidders, anonymous to each other, electronically submit real time bids on designated supplies or services.

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

Signature means a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.

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

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

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

Supplies means all tangible property, including but not limited to equipment, materials, and commodities required for ongoing operational Town requirements including but not limited to

equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

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

Term contract or agreement means a contract in which a source or sources of supply are established to provide for needs for a specified period of time for specified services or supplies at an agreed upon unit price(s).

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

Written or in writing means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Sec. 2-104. Reserved.

Sec. 2-105. Responsibilities and authority.

- (a) *General.* Except as otherwise provided herein, the Town Manager shall have responsibility for the general supervision of the purchasing and contracts duties and shall perform all duties required and shall act as the principal public purchasing officer for the Town, responsible for the procurement of supplies, services and construction in accordance with this article, as well as the disposal of excess equipment or supplies.
- (b) *Responsibilities and authority.*
 - (1) All purchases of goods and services shall be processed through the Town Clerk/Treasurer and is hereby authorized to promulgate procedures for the requisitioning of supplies and services.
 - (2) For all purchases, the Town Clerk/Treasurer shall verify that the purchase request has sufficient unencumbered funds to cover the purchase, or that a budget amendment or transfer is in process for approval by the Town Manager or designee.
 - (3) The Town Manager or designee shall have the authority to approve and execute all procurement-related purchase orders, contracts, contract amendments and contract renewals up to and equal to the amount of the threshold for purchasing Category one, as defined in the F.S. § 287.017 (1) or less.
 - (4) The mayor shall have the authority to execute all procurement-related, contracts, contract amendments and contract renewals in excess of the threshold for purchasing Category one, as defined in the F.S. § 287.017(3) after Town Council approval. Such execution shall be attested to by the Town Clerk/Treasurer.

Sec. 2-106. Methods of source selection.

- (a) *General.* Except as otherwise provided by law, this article or by Charter; all contracts of the Town involving dollar amounts in excess of the threshold for purchasing Category one, as defined in F.S. § 287.017, as amended, shall be awarded through the use of a formal competitive process identified within this section.
 - (1) *Competitive sealed bidding.*

- a. *Invitation for bid.* An invitation for bid may be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- b. *Public notice.* Adequate public notice of the invitation for bid shall be given a reasonable time, not less than ten (10) calendar days prior to the date set forth therein for the opening of bids, in accordance with procedures as may be promulgated by the Town Clerk/Treasurer. The Town Clerk/Treasurer shall designate a means of distribution or determination of information to interested parties using methods that are reasonably available. Such methods may include, but are not limited to, publication in newspapers of general circulation, websites designated and maintained for such notification or on a dedicated area on a website maintained by the Town, or through the use of vendor list which may be maintained by the purchasing and contracts division Town Clerk/Treasurer on an ongoing basis. Publications in newspapers of general circulation must be at least one (1) time, with the notice published in the "Legal Notices" section of the newspaper at least ten (10) days prior to the bid opening date. Notices published on websites must be posted immediately upon release of the invitation for bid and remain available to the public until the scheduled bid opening date and time. Said notice shall state the place, date and time of the bid opening. When the projected cost of a Town construction project exceeds the bid threshold set forth in F.S. § 255.0525(2), as amended, bids for that project shall be advertised in accordance with procedures outlined in said statute.
- c. *Bid bonds.* May be required for competitive sealed bids exceeding expenditures of \$250,000 by the Town Clerk/Treasurer, bid bonds or deposits may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where the Town Clerk/Treasurer has requested surety. A successful bidder shall forfeit any surety required by the Town Clerk/Treasurer upon failure on the part of the bidder to enter into a contract within ten (10) days after the award.
- d. *Addenda.* After an invitation for bid is issued and before the submission deadline, the Town Clerk/Treasurer may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the bid. Town Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
- e. *Bid opening.* The following procedures shall apply to all bid openings:
 - 1. *Sealed.* Bids shall be submitted sealed to the purchasing office and shall be clearly identified in accordance with the terms of the invitation for bid, as bids on the exterior of the envelope or other casing or wrapping sealing the contents of the bid from view.
 - 2. *Copies.* The appropriate number of copies of the bid as required by the invitation for bid shall be required to be submitted prior to bid opening.
 - 3. *Opening.* Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Town Clerk/Treasurer deems appropriate, together with the name of each bidder shall be recorded;

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

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

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

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

- h. *Bid evaluation.* Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used, including past performance. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.
- i. *Award.* The contract shall be awarded with reasonable promptness to the lowest, fully responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bid. In the event all the low responsive and responsible bid for a project exceeds available funds, the Town Manager is authorized, when time of economic considerations preclude re-solicitation to negotiate a reduced scope of work and an appropriate adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. In determining the lowest responsive and responsible bidder, in addition to price, Town officials may consider other factors that relate directly to the bidder's level

of responsibility pursuant to the requirements of subsection 2-106(a)(1)h of this Code, ("Methods of Source Selection, Competitive Sealed Bidding, Bid Evaluation").

- j. *Award to other than low bidder.* When award of a solicitation is not granted to the lowest priced, a statement of the reason for award to the next lowest responsive and responsible bidder shall be prepared and made a part of the record file.
- k. *Tie bids.*
 - 1. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded based on the following criteria to be considered in the following order of priority:
 - (a) A local bidder with a primary business location within the Town of Malabar.
 - (b) A local bidder with a primary business location within Brevard County.
 - (c) A bidder with a primary business location within the State of Florida.
 - 2. The Town may split the award of a contract when it is to the Town's advantage.
 - 3. Where subsections (a)(1)k.1.(a) through 1.(c) of this section is not in effect, and all other potential remedies have been exhausted, the tie bid may be resolved by lottery. Such lottery shall be conducted by the Town Manager or designee and shall be open to the public.
 - l. *No bids received.* If no bids for goods or services are received, the Town Manager shall have the authority to negotiate terms and pricing with firms which provide the goods or services sought.

(2) *Electronic auctions/reverse auctions.*

- a. The Town may award contracts for supplies and nonprofessional services by electronic auctions, otherwise known as reverse auction, a procurement method where bidders, anonymous to each other, electronically submit real time bids. During the bidding process, bidders' prices are revealed, and bidders shall have the opportunity to modify their bid prices for the duration of the time period established by the solicitation. Award shall be made to the lowest responsive and responsible bid.
- b. *Public notice.* Adequate public notice of the electronic auction/reverse auction shall be given in the same manner as provided in subsection (a)(1)b of this section, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice").
- c. *Bid bonds.* May be required for competitive sealed bids exceeding expenditures of \$250,000 by the Town Clerk/Treasurer, bid bonds or deposits may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where the Town Clerk/Treasurer has requested surety. A successful bidder shall forfeit any surety required by the Town Clerk/Treasurer upon failure on the part of the bidder to enter into a contract within ten (10) days after the award. *Addenda.* After an invitation for bid is issued and before the actual occurrence of the electronic auction/ reverse auction, the Town

Clerk/Treasurer may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the bid. The Town Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.

- e. *Bid submission.* Bid pricing shall be submitted by electronic means in a manner prescribed procedures as prescribed by the Town Clerk/Treasurer.
 - f. *Acceptance, evaluation and award.* Bids shall be accepted, evaluated and awarded consistent with the requirements of subsections (a)(1)f, (1)h, (1)i, (1)j and (1)l of this section. ("Methods of Source Selection, Competitive Sealed Bidding).
- (3) *Competitive sealed proposals (request for proposals).*
- a. When the Town Clerk/Treasurer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the Town, a contract may be entered into by the use of the competitive sealed proposal method.
 - b. *Public notice.* Adequate public notice of the request for proposals (RFP) shall be given in the same manner as provided in subsection (a)(1)b of this section, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice").
 - c. *Addenda.* After a request for proposals is issued and before the submission deadline, the Town Clerk/Treasurer may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the RFP. Town Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
 - d. *Receipt of proposals.* Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with regulations and shall be open for public inspection in accordance with Chapter 119, Florida Public Records Law, Florida Statutes, as amended.
 - e. *Evaluation factors.* The request for proposals shall state the criteria to be used in the evaluation of the proposals which shall include their relative importance.
 - f. *Evaluation committee.* The Town Manager shall appoint an evaluation committee to evaluate and make a recommendation based on the criteria set forth in the request for proposals. The Town Clerk/Treasurer shall recommend to the Town Manager, prospective members for the committee who may include but shall not be limited to, representatives of the end user agency, including any assigned project Manager, or individuals who may possess a level of skill or expertise related to the scope of work. All meetings of an evaluation committee shall be open to the public in accordance with the Florida Sunshine law, as amended, and public notice shall be conspicuously posted by the Town.
 - g. *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably acceptable for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to

award for the purpose of obtaining BAFOs. In conducting such discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. In the event of receipt of an adequate number of proposals, which in the opinion of the evaluation committee require no clarification and/or supplementary information, such proposals may be evaluated without discussion or need for presentations.

- h. *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the Town taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis upon which the award is made. The Town reserves the right to waive any and all formalities of the proposal procedure and to award the proposal in the best interest of the Town.
- i. *Continuing services contracts.* Continuing services contracts are defined as contracts for professional services entered into in accordance with F.S. § 287.055, whereby a firm provides professional services for projects in which construction costs, and costs for a study activity do not exceed the then current thresholds outlined in F.S. § 287.055, or for work of a specified nature as outlined in the contract required by the Town, with no time limitation except the contract must provide a termination clause. Continuing services contracts shall be awarded using a qualifications-based selection procedure in accordance with F.S. § 287.055.

(4) *Invitation to negotiate.*

- a. *Determination of use.* When the Town Clerk/Treasurer determines that a procurement request is not suitable for an invitation for bid or request for proposals, and that concurrent negotiation with one (1) or more vendors may be necessary for the Town to receive the best value, the Town Clerk/Treasurer may procure commodities and contractual services by competitive sealed replies solicited through an invitation to negotiate. This source selection method does not apply to procurements subject to the Consultants' Competitive Negotiation Act, F.S. 287.055, unless expressly permitted by statute.
- b. *Public notice.* Adequate public notice of the invitation to negotiate shall be given in the same manner as provided in subsection 2-106(a)(1)b of this Code, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice")
- c. *Addenda.* After an invitation to negotiate is issued and before the submission deadline, the Town Clerk/Treasurer may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the invitation to negotiate. The Town Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.
- d. *Receipt of competitive sealed replies by invitation to negotiate.* Responses shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Submittals shall be open for public inspection in accordance with Florida's Public Records Law, as amended.
- e. *Evaluation criteria.* Responsive replies shall be evaluated and ranked against all evaluation criteria as set forth in the invitation to negotiate, and shall select,

based on the ranking, one (1) or more respondents with which to commence negotiations.

- f. *Evaluation committee.* The Town Manager shall appoint an evaluation committee to evaluate and make a recommendation based on the criteria set forth in the invitation to negotiate. The Town Clerk/Treasurer shall recommend to the Town Manager, prospective members for the committee who may include but shall not be limited to, representatives of the end user agency, or individuals who may possess a level of skill or expertise related to the scope of work.
 - g. *Negotiations with respondents.* Negotiations may be conducted with respondents. The Town may utilize either sequential or concurrent negotiation methods.
 - 1. *Sequential negotiations:* The Town may consider the respondent's statements of qualifications without consideration to price and may select the most qualified respondents as finalists. The Town may conduct interviews with all finalists and rank the responses without regard to price. Exclusive negotiations as to the scope of work, terms and price may be conducted with the respondent providing the proposal ranked as most advantageous to the Town. If an agreement is not reached, the Town may commence negotiations with the successive ranked respondents until an agreement is attained.
 - 2. *Concurrent negotiations:* The Town may consider the respondent's statement of qualification and price; however, both are subject to future negotiations. The Town may select a group of the most qualified respondents as finalists and commence simultaneous negotiations with each regarding the scope of work and price. Final BAFOs may be requested of the finalists. In determining the best value, the negotiation team may re-rank the respondents. Award of a contract is made to the respondent representing the best value to the Town.
 - h. *Award.* Contract award shall be made to the respondent whose negotiated agreement is determined to be the best value to the Town considering final negotiated pricing and other criteria as specified in the invitation to negotiate. The contract file shall contain the basis upon which the award was made.
- (b) *Selection advisory committee.* There is hereby established a selection advisory committee (SAC) for the purpose of evaluating firms who express interest in contracting with the Town for professional services for projects subject to the requirements of the Consultants' Competitive Negotiations Act, F.S. § 287.055, as may be amended from time to time.
- (1) The SAC members shall be comprised of at a minimum of consist of three (3) voting members and one (1) nonvoting member
 - a. The Town Clerk/Treasurer or their designee, who shall facilitate the committee process, and be a non-voting member;
 - b. Three (3) members shall be appointed by the Town Manager or their designee from a list of recommendations to the Town Clerk/Treasurer received from the director of using department;
 - (2) All meetings of the SAC shall be subject to and held in conformity with the requirements of the Florida Sunshine law, as may be amended.

- (3) All minutes of the meetings of the SAC shall be promptly recorded and the records shall be open to public inspection in accordance with the provisions of Florida's Public Records laws, as may be amended.
- (4) *Selection procedure.*
 - a. The SAC shall evaluate the statements of qualifications submitted by all proposers, shall conduct discussions with, and may require presentations by no fewer than three (3) firms regarding their qualifications, approach to the project, and ability to furnish the required services; however, if less than three (3) proposals are received, the SAC may interview those firms' submitting responses. All expenses, including travel expenses for interview, incurred in the preparation of the proposal shall be borne by the proposer. After presentations and interviews have been completed, the SAC shall rank all responses and determine the response that is most advantageous to the Town.
 - b. The ranking of firms shall be based on the SAC's ability to differentiate qualifications applicable to the scope and nature of the request for proposals. Such determination shall be based on, but not necessarily be limited to:
 - 1. The proposer's demonstrated understanding of the Town's requirements and plans for meeting those requirements;
 - 2. The professional qualifications, related experience and adequacy of the personnel assigned to the project;
 - 3. The prior experience and references of the proposer;
 - 4. The prior experience, if any, that the proposer has had with the Town.
 - 5. All other statutory requirements of the Consultants' Competitive Negotiation Act as applicable to the specific procurement, including whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985.
 - c. Upon reaching consensus on the recommendation by the SAC, the Town shall negotiate with the number one ranked firm, and upon completion of negotiations, shall make a recommendation to the Town Council for contract award. If negotiations are not successful with the number one (1) ranked firm, the Town shall negotiate with the next highest ranked firm.

Sec. 2-107. Small purchase procedures.

- (a) *General.* Any procurement not required to be conducted pursuant to the terms and conditions of section 2-106 of this Code, ("Methods of Source Selection"), shall be made in accordance with the operational procedures and thresholds for informal small purchases.
- (b) *Delegation of authority.* The Town Manager may establish operational procedures delegating authority for Town departments to obtain written or oral quotations and issue small dollar procurements directly to vendors for purchases below the purchasing Category one threshold as defined in the most current version of F.S. § 287.017, as amended.
- (c) Electrical work in excess of the threshold provided pursuant to F.S. § 255.20(1), as amended, shall be competitively bid.
- (d) *Requirements for quotations.* The Town Manager, or designee, or by a department or division, may solicit informal quotations by anyone (1) or more of the following methods:
 - (1) By direct mail or requests to prospective vendors;

- (2) By telephone, facsimile or e-mail;
 - (3) By public notice posting on a Town-maintained public electronic bulletin board or bulletin board at Town Hall;
 - (4) By use of a third-party internet hosting site;
 - (5) By reverse auction.
- (e) *Quotation threshold.* The following dollar thresholds shall apply to the requirement for quotations for small market purchases made by the Town. The Town Manager shall develop procedures for processing quotations within the guidelines established.

\$0.01 — \$2,000	(3) Quotes are highly recommended.
\$2,001 — \$19,999.99	Minimum of three (3) written quotations required.
\$20,000+	Formal process required as prescribed in Sec. 2-106. Methods of source selection.

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

- (f) *Recording.* The Town Clerk/Treasurer shall maintain a record of all small purchases and the quotations submitted in competition thereon, and such records shall also be open to public inspection.
- (g) *Procurement cards.* The Town Clerk/Treasurer shall have the authority to issue Town procurement cards to employees at the request of the department director. The Town Manager shall develop operational policies and procedures for the use of the procurement cards, which shall be adopted as an administrative policy.
- (h) *Petty cash.* The Town Clerk/Treasurer may promulgate rules and regulations governing petty cash purchases as appropriate
- (i) *Unauthorized purchasing practices.* An unauthorized purchase occurs when any employee of the Town orders, contracts for or buys any materials or supplies outside the purview of the Town Charter and/or this Code. Any individual making an unauthorized purchase may be subject to disciplinary actions as appropriate, which may include termination and/or prosecution. The following are unauthorized purchasing practices:
 - (1) Artificially dividing purchases into multiple segments in an attempt to issue single orders below the dollar threshold requirements as established herein (also known as "stringing" or "splitting purchase orders") is prohibited.
 - (2) Purchasing any supplies or services above the thresholds delineated herein directly from a vendor, bypassing the Town Clerk/Treasurer.
 - (3) Committing to a purchase without issuance of an authorized purchase order, when one is required.
 - (4) Obtaining items available on an existing Town term contract from a supplier that does not hold the contract.
 - (5) Providing false information such as false quotations (without actually contacting and obtaining a quotation, bid or proposal from a vendor).

- (6) Adding unauthorized purchases to previously approved purchase orders without approval of the appropriate approval authority and subsequent modification of the purchase order.
- (j) *Change orders.* The Town Manager or designee is authorized to approve and initiate change orders determined in the judgment of the Town Manager or designee to be in the public interest as follows:
 - (1) All change orders decreasing the cost of the contract to the Town; providing, however, such decrease does not materially alter the character of the work contemplated by the contract;
 - (2) All change orders increasing the cost of the contract to the Town, up to the formal competitive purchasing Category one threshold as defined in the most current version of F.S. § 287.017(3), as amended, and approved by the Town Council, provided that sufficient budgeted funds are available.
 - (3) All other change orders must be formally approved by the Town Council before work may be authorized to begin; and no claim against the Town for extra work in furtherance of such change order shall be allowed unless prior written authorization has been provided, notwithstanding any other provision, contractual or otherwise.
 - (4) Change orders shall not artificially be distributed or divided so as to bring the amount within the approval level of the Town Manager, and any such proposed change order shall include within it all logically connected work required to be done at the time of the proposal.
 - (5) Work defined by the scope of a change order may not be commenced until obtaining final approval of the change order, except where such work is of an emergency nature as defined in subsection 6-148(b) "Emergency Procurements" of this Code.

Sec. 2-108. Exclusions and exceptions to bid and proposal requirements.

- (a) *Exclusions.* This article shall not apply to:
 - (1) The procurement of dues and memberships in trade or professional organizations; registration fees for trade and career fairs, subscriptions for periodicals and newspapers; advertisements; postage; expert witness; legal and mediation services;; abstracts of title for real property; title searches and certificates; title insurance for real property; real estate appraisal services; water, sewer, telecommunications and electric utility services; copyrighted materials or patented materials including, but not limited to, technical pamphlets, published books, maps, testing or instructional materials; fees and costs of job-related seminars and training;
 - (2) Goods purchased with petty cash or Town procurement cards in accordance with the Town's petty cash and procurement card procedures;
 - (3) Items purchased for resale to the general public; for example, supplies for a Town-owned concession area.
 - (4) Purchase of groceries pursuant to local, state or federal emergency declarations;
 - (5) Artistic services or works of art;
 - (6) Travel expenses, hotel accommodations and hotel services pursuant to per diem rates established by General Services Administration (GSA);
 - (7) Town-sponsored events held at venues not owned by the Town;

- (8) Entertainment and entertainment-related services for Town-sponsored events;
 - (9) Purchase of motor vehicle license plates from a governmental agency;
 - (10) Persons or entities retained as "expert consultants" to assist the Town in litigation, or in threatened or anticipated litigation;
 - (11) Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration;
 - (12) Auditing services that are not subject to the requirements of F.S. Chapter 218, Part III;
 - (13) Any services identified in F.S. § 287.057, as may be amended from time to time, as being exempt from competitive bid/request for proposal requirements.
- (b) *Sole and single source procurements*
- (1) A contract may be awarded for a supply, service, or construction item without competition when the Town Manager or a designee determines in writing that there is only one (1) economically feasible source for the required supply, service, or construction item, or when requirements for standardization, warranty, geographic and territorial restrictions, or other factors create a situation where competition is either not feasible or practicable.
 - (2) The Town Manager or designee shall conduct negotiations, as appropriate, regarding price, delivery and terms. The Town department requesting a single, or sole source procurement must submit a written request to the Town Manager for approval, which must be accompanied by a written justification signed by the department head. The justification must document the purpose of the purchase, the reason(s) for the single or sole source purchase, and a summary of attempts to obtain competition.
 - (3) Sole source purchase requests shall be approved by the Town Council. A record of sole source purchases shall be maintained by the Town and shall list each vendor's name, the amount and type of each contract and a listing of the item(s) procured under each contract.
- (c) *Emergency procurements.*
- (1) Notwithstanding any other provision of this Code, specifically section 2-400 "EMERGENCY POWERS", the Town Manager or designee may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be provided by the Town Manager to the Town Council and included in the contract file.
 - (2) The Town Manager is authorized to determine if an emergency exists for purposes of emergency purchases and procurements. If an emergency does exist, the Town Manager shall authorize emergency expenditures for the procurement or temporary acquisition of supplies, equipment and services necessary to meet the Town's needs as a result of the emergency and may delegate authority for a department head or other designee to secure emergency proposals. The Town Manager, the Town Clerk/Treasurer, or the designee shall endeavor to secure proposals from at least two (2) separate sources.
 - (3) Any emergency procurement exceeding the award authority of the Town Clerk/Treasurer, or the Town Manager shall be reported to the Town Council in writing

or at a Town Council meeting, no later than ten (10) working days after the determination that the emergency situation has been stabilized and that no further emergency expenditures are required. The Town Manager shall make a full disclosure of all emergency expenditures made pursuant to this section to the Town Council at the next regular meeting of the Town Council.

- (d) *Cooperative purchasing.* When deemed to be in the best interests of the Town, the Town Manager may participate in, sponsor, conduct or administer contracts under a cooperative purchasing program with one (1) or more governmental units for the procurement of any supplies, services, or construction. Such cooperative purchasing programs may include, but not be limited to, joint or multiparty contracts between public procurement units and open-ended public procurement term contracts that are made available to other governmental units.
- (e) *Purchases from other governmental entities.* Purchases of goods or services from the federal government, any state or political subdivision thereof, or any municipality are exempt from the requirements of this section, will require approval by the Town Council.
- (f) *Purchases of goods or services from contracts awarded by other governmental or not-for-profit entities by a formal competitive selection process.* The purchase of goods or services under a contract awarded by the United States Government or another governmental or not-for-profit entity by a formal competitive process is authorized provided the Town Manager makes a determination that time, expense and marketplace factors make it financially advantageous for the Town to do so, will require approval by the Town Council.
- (g) *Professional services.* Contracts for the service of professionals, including but not limited to the practice of law, management consulting, medicine, real estate appraisal, or other area of expertise as determined by the Town Manager or designee to be in the best interest of the Town, and not otherwise subject to the requirements of F.S. § 287.055, as amended, may be entered into without competitive bidding, however, qualifications, work history and other relevant data shall be reviewed before entering into such contracts. Professional services contracts that exceed the threshold established in subsection 2-106(a) of this Code, ("Methods of Source Selection"), will require approval by the Town Council.
- (h) *Owner direct purchase.* A contract may be awarded for supplies or materials without competition where such supplies or materials are being procured by the Town as an owner direct purchase for incorporation into a public works project as defined in FSS 255.0992(b) and as amended, the contract for which was previously awarded by the Town, which prior award included the cost of such supplies and materials. In such event, the Town shall procure the supplies or materials in accordance with Florida Statutes and regulations related to owner direct purchases by governmental entities.
- (i) *Waiver of procurement procedures.* The Town Council may authorize the waiver of procurement procedures upon the recommendation of the Town Manager that it is in the Town's best interest to do so to obtain goods and services which cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors. Purchases authorized by the waiver process shall be acquired with such competition as is practicable under the circumstances and only after a good faith review of all available sources and negotiation as to price, delivery and terms. There shall be no waiver of procurement procedures for procurements that are subject to the provisions of F.S. § 287.055 or § 255.20, as amended.

Sec. 2-109. Bonds and security requirements.

- (a) *Bid security.*

- (1) The Town Clerk/Treasurer may require the submission of a bid security to guarantee full and faithful performance of a solicitation. In determining the amount and type of bid security required, the Town Clerk/Treasurer or designee shall consider the nature of the solicitation and performance required to protect the Town during the term of the contract. Bid security shall be a bond provided by a surety company licensed to do business in the State of Florida or the equivalent in cash or otherwise supplied in a form satisfactory to Town and approved by the Town Clerk/Treasurer.
 - (2) *Amount of security.* Bid security shall be in an amount equal to at least five (5) percent of the amount of the bid.
 - (3) *Rejection of bids for noncompliance with bid security requirements.* When the invitation for bids requires security, noncompliance requires that the bid be rejected unless, pursuant to regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements.
 - (4) If a bidder is permitted to withdraw its bid before award as provided in subsection 2-106(a)(1)g of this Code, ("Methods of Source Selection, "Correction or Withdrawal of Bids; Cancellation of Awards"), no action shall be taken against the bidder or the bid security.
- (b) *Performance and payment bonds.*
- (1) When a construction contract is awarded in excess of two hundred thousand dollars (\$200,000.00), the following bonds as security shall be delivered to the Town and shall become binding on the parties upon execution of the contract as required in F.S. § 255.05 as may be amended.
 - a. *Performance bond:* Required to ensure the completion of a project in the event of contract breach or forfeiture by the contractor.
 - b. *Payment bond:* Required to ensure the payment of sub-contractors and suppliers to a contractor, for work completed in the event of contract breach or forfeiture by the contractor.
 - (2) *When required.*
 - a. The Town Clerk/Treasurer shall require performance and payment bonds for all contracts for the construction of a public building or public work, or for repairs upon a public building or a public work whose estimated construction cost exceeds the thresholds established by subsections 2-109 (b)(1) of this Code.
 - b. Performance and payment bonds may also be required, at the discretion of the Town Clerk/Treasurer, for construction work estimated to cost less than the thresholds established by F.S. § 255.05, as amended. Performance and payment bonds shall be executed by a surety company authorized to do business in the State of Florida in an amount equal to one hundred (100) percent of the contract price or otherwise secured in a manner satisfactory to the Town. The bonds shall be recorded in the public records of Brevard County, Florida.
 - (3) *Reduction of bond amounts.* The Town Clerk/Treasurer shall be authorized to reduce the amount of performance and payment bonds when conditions warrant, and when there is no statutory requirement for performance and payment bonds.
 - (4) In lieu of a performance and payment bond, the Town may accept cash, money order, certified check, cashier's check, or irrevocable letter of credit in the amount of one hundred (100) percent of the contract price. Such alternate form of security shall be

for the same purpose and shall be subject to the same conditions as a performance and payment bond.

- (c) *Guidelines and standards for surety companies.* The Town Clerk/Treasurer in consultation with the Town Manager may establish minimum guidelines and standards for surety companies providing performance and payment bonds to the Town on behalf of a contractor.
- (d) *Use of Town forms.* The Town reserves the right to require that all bid sureties, performance and payment bonds be submitted on forms prescribed by the Town. The Town Clerk/Treasurer or designee shall include copies of any prescribed bond forms as a part of the solicitation document provided to bidders and proposers.

Sec. 2-110. Insurance requirements.

The Town Clerk/Treasurer with the concurrence of the Town Manager may establish guidelines for determining the type and minimum limits of liability, workers' compensation and other forms of insurance coverage that may be required for each type of contract. The Town of Malabar shall be named as an additional insured for any required general liability coverage. From time to time, the Town may require a contractor or consultant to provide the Town with professional liability errors and omissions coverage. Firms unable to comply with the requirements of this section may be considered to be non-responsive vendors and precluded from doing business with the Town.

Sec. 2-111. Types of contracts and contract administration.

- (a) *General.* Firm fixed price contracting is the preferred method; however, any type of contract which will promote the best interests of the Town may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the Town than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.
- (b) *Multi-year contracts.*
 - (1) *Specified period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the Town provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for such contract.
 - (2) *Use.* A multi-year contract is authorized where:
 - a. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - b. Such a contract will serve the best interests of the Town by encouraging effective competition or otherwise promoting efficiencies in Town procurement.
 - (3) *Cancellation due to unavailability of funds in succeeding fiscal periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be paid for any work, supplies or services already delivered under the contract.
- (c) *Contract administration.* The Town Manager shall establish operational procedures to maintain a contract administration system designed to ensure that a contractor is

performing in accordance with the solicitation requirements for which the contract was awarded and the terms and conditions of the contract.

- (d) *Contingent contracts.* The use of contingent contracts is prohibited.
- (e) *Cancellation due to non-performance.*
 - (1) *Applicability.* This section applies to contracts, procured by the Town and between a person or entity which provide for termination of the contract by the Town for cause and/or for convenience.
 - (2) *Authority.*
 - a. The Town Manager upon consultation with the Town clerk shall have the authority to terminate a contract for cause, in the event of a breach by the contractor, or for convenience, if in the best interest of the Town.
 - b. Nothing in this section shall be construed to restrict the Town Manager upon consultation with the Town Clerk/Treasurer from simultaneously making a determination to terminate a contract under this section and suspending or debaring a contractor.
 - (3) *Notice of decision.* A copy of any decision under this section shall be furnished in writing to the contractor.
 - (4) *Finality of decision.* Any decision under this section shall be final and conclusive upon the contractor.
 - (5) *Other remedies.* Nothing in this section shall limit the Town from pursuing other legal or contractual rights or remedies against a contractor.
 - (6) The contract documents may provide contract cancellation or contractor termination procedures that are different from, or in addition to, those provided in this section. If a contract contains a cancellation or termination clause, that clause rather than this section shall determine the respective rights and responsibilities of the parties in the event of cancellation or termination.

Sec. 2-112. Specifications.

- (a) *Maximum practicable competition.* All specifications and statements of work used for formal competitive solicitations shall be drafted to promote overall economy for the purposes intended, to encourage competition in satisfying the Town's needs, and shall not be unduly restrictive. This requirement shall apply to all specifications including, but not limited to, those prepared for the Town by outside sources.
- (b) *Required characteristics.* All specifications should include required characteristics for performance and design. To the extent practicable, and unless otherwise permitted by this Code, all specifications shall describe the Town's requirements in a manner that does not unnecessarily exclude a material, service or construction item. All specifications and statements of work used for competitive solicitations are subject to the final approval of the Town Manager or designee.
- (c) *Relationship with user departments.* The Town Manager shall obtain advice and assistance from personnel of user departments in the development of specifications and may delegate to a user department the authority to prepare and utilize its own specifications.

Sec. 2-113. Procurement of construction and professional design services.

- (a) *Procurement of construction delivery methods.* Contracts for construction services shall be procured in accordance with Florida Statutes and with established procurement procedures and delivery methods approved by the Town Manager or designee. Construction delivery methods may include, but are not limited to, design-bid-build, design/build, construction Manager-at-risk, task order-contracting, fixed price, or other approved methods.
- (b) *Bonds and insurance requirements for construction projects.* The Town shall require bonds and insurance from contractors for construction projects as prescribed in sections 2-109, "Bonds and Security Requirements" and 2-110, "Insurance" of this Code.
- (c) *Professional design services.* Contracts for professional design services, including architectural, professional engineering, landscape architecture or registered surveying or mapping services must be procured in accordance with the Consultants' Competitive Negotiations Act F.S. § 287.055, as amended, in accordance with the requirements of subsection 2-106(a)(2) of this Code, ("Methods of Source Selection; Competitive Sealed Proposals") utilizing a qualifications based procurement process which shall not permit the use of price as an evaluation factor.

Sec. 2-114. Appeals and remedies.

- (a) *Applicability.* This section shall apply to protests by bidders and proposers regarding claims made by contractors holding a Town contract and shall only apply to protests by bidders or offerors when the Town Manager recommends a purchase in excess of the Town's formal competitive threshold as established in subsection 2-106(a) "Methods of Source Selection", "General" of this Code.
 - (1) *Right to protest.* Any actual or prospective bidder or proposer who is aggrieved in connection with a solicitation or award of a bid or contract may protest to the Town Manager in accordance with established procedures detailed in the purchasing manual.
 - (2) *Remedy.* The Town Manager is authorized to settle any protest regarding the solicitation or award of a Town contract, any claim arising out of the performance of a Town contract, prior to an appeal to the Town Council, or the commencement of an action in a court of competent jurisdiction
 - (3) *Stay of procurement.* In the event of a timely protest properly filed, the Town Clerk/Treasurer shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Town Manager or Town Council, as appropriate, makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the Town.

Sec. 2.115. Authority to debar or suspend.

- (a) *Authority.* The Town Manager or designee, after reasonable notice to the person involved and reasonable opportunity for that person or firm to be heard, is authorized to debar a vendor or bidder for cause from consideration for award of contracts. Debarment shall not be for a period of more than three (3) years.
- (b) *Causes for debarment or suspension.* The causes for debarment or suspension include the following:
 - (1) Conviction for the Council of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals or contracts;
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the Town Manager or designee to be so serious as to justify debarment action:
 - a. Deliberate failure without good cause to perform in accordance with the contract documents or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
 - c. Refusal to perform a contract after a contract is accepted by the Town and awarded to the vendor.
 - d. Any other cause the Town Clerk/Treasurer determines to be so serious and compelling as to affect the responsibility as a contractor, including, but not limited to, debarment by another governmental entity for any cause listed in regulations; and
 - e. Violation of the ethical standards set forth in section 6-156 (Ethics in public contracting).
- (c) *Decision.* The Town Clerk/Treasurer shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.
- (d) *Notice of decision.* A copy of the decision under subsection 6-154(c) shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
- (e) *Appeal.* A decision under subsection 6-154(c) shall be final unless within ten (10) calendar days from the date of receipt of the decision, the protestant or claimant files a written appeal with the Town Manager.
- (f) *Authority of the Town Manager.* The Town Manager shall have the jurisdiction to review the Town Clerk/Treasurer decision regarding suspension or debarment and decide whether, or the extent to which, the debarment or suspension was in accordance with this section, was in the best interest of the Town, and was fair. such decision by the Town Manager shall be final and conclusive.

Sec. 2-116. Ethics in public contracting

- (a) *Standards of ethical conduct.*
 - (1) *Ethical standards for employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the Town employee's or elected official's duties is a breach of a public trust.
 - (2) *Ethical standards for non-employees.* Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section is also a violation of this article.

- (b) *Standards of conduct for employees, public officials and suppliers.*
- (1) *Failure to follow proper procurement procedures.* It shall be a violation of this section for any employee to order, contract for or purchase any materials, supplies or services except in strict compliance with all procurement procedures as provided herein or as established by administrative policy of the Town.
 - (2) *Solicitation or acceptance of gifts.*
 - a. No Town official or employee shall solicit or accept anything of value from any vendor or bidder, including a gift, loan, reward, promise of future employment, favor or service, based upon any understanding that the actions of that official or employee would be influenced thereby.
 - b. No bidder, supplier, vendor or contractor shall solicit or provide anything of value to any Town official or employee.
 - (3) *Doing business with the Town.* No Town officer, agent, employee nor any elected public official acting in his or her official capacity shall directly or indirectly purchase, rent or lease any realty, goods or services for the Town from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director or proprietor or in which the official or employee or the officer's or employee's 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.
 - (4) *Unauthorized compensation.* No Town officer, agent or employee or his or her spouse or child shall, at any time, accept any compensation, payment or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his or her official capacity.
 - (5) *Conflicting employment or contractual relationship.* No Town officer, agent or employee through outside employment or contractual relationship shall have any financial interests in the profits of any contract, service or other work performed by the Town; nor personally profit directly or indirectly from any contract, purchase, sale or service between the Town and any person or company through a relationship with any business entity which is doing business with the Town. This section, however, shall not be construed to prevent any officer, agent or employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge of the officer or employee's duties in his or her employment with the Town.
 - (6) *Contingent fees.* No Town official or employee shall be retained, or shall retain a person, to solicit or secure a Town contract upon an agreement or understanding for a Council, percentage, brokerage or contingent fee.
 - (7) *Confidential information.* No Town official or employee shall disclose or use any information not available to members of the general public and gained by reason of his official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.
 - (8) *Prohibition against lobbying.*
 - a. During the solicitation of any bid or proposal, any firm and its agents, officers or employees who intend to submit, or who have submitted, bids or proposals shall not lobby, either individually or collectively, any Town Council members, candidates for Town Council or any employee of the Town. Contact should only

be made through regularly scheduled Council meetings, or meetings scheduled through the Town Clerk/Treasurer for purposes of obtaining additional or clarifying information. Any action, including meals, invitations, gifts or gratuities by a submitting firm, its officers, agents, or employees shall be within the purview of this prohibition and shall result in the immediate disqualification of that firm from further consideration.

- b. During a formal solicitation process, contact with personnel of the Town of Malabar other than the Town Clerk/Treasurer or designated representative regarding any such solicitation may be grounds for elimination from the selection process.

Sec. 2.116.1. Surplus tangible property.

- (a) *Determination that property is surplus.* At least once annually, each department shall review Town inventory and make a determination of Town property that should be classified as surplus; however, at any time during the fiscal year a department may identify property as being surplus.
- (b) *Disposition of surplus property.* The Town Manager shall have the responsibility to dispose of any Town tangible property that exists on the official municipal inventory, that is obsolete, worn out, excess, scrapped, or not cost effective to repair.
 - (1) Using departments shall submit to the Town Manager or designee, at such time and on such forms that may be prescribed, reports showing stock of all supplies which are no longer used, or which have become obsolete, worn out, excess, scrapped or that are not cost effective to repair. The using department may suggest a dollar value per item or per lot of items; however, such suggestion shall not constitute the minimum sale amount.
 - (2) The Town Manager shall have the authority to dispose of surplus property by the method or methods deemed to be most advantageous, convenient and economical to the Town. Methods of disposal of surplus stock may include, but not be limited to the use of competitive sealed bids, public auction, including internet auctions, established markets, sales at posted prices, or trade-in for new equipment, donated pursuant to FSS 273.01(3), as may be prescribed for the individual situation.
 - (3) Property that has been declared surplus that has a book value of greater than five thousand dollars (\$5,000.00) shall be disposed of by authorization of the Town Council.
 - (4) Property which has been declared surplus may be donated to an outside agency at the discretion of the Town Manager or designee. The Town Manager or designee shall report any donations with a book value of greater than five thousand dollars (\$5,000.00) to the Town Council at its next regularly scheduled meeting, .
 - (5) Property which is in a wrecked, inoperative or partially dismantled condition, or which has deteriorated to the point that it has no apparent monetary value or may pose a potential risk to the Town if disposed of through a sale, may be discarded as trash in an environmentally acceptable method, upon receipt of written approval by the Town Manager.
 - (6) In the event that either the competitive sealed bid or public auction methods for disposal are used, notice of a proposed sale of property shall be publicly noticed by advertisement in a newspaper of general circulation within the Town, or by electronic notice published on the Internet at least one (1) week prior to the scheduled sealed

bid or auction. The property shall be available to prospective buyers for inspection in advance of the bid opening or auction.

- (7) Competitive sales of surplus property shall be made to the highest responsive and responsible bidder.
- (c) *Surplus proceeds.* The proceeds from any sale of Town property, less selling expenses if applicable, shall be deposited into the fund which purchased the property.

Sec. 2-116.2 Surplus real property.

- (a) *General.* Upon the Town Council's determination that continued ownership of any parcel of real estate is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the Town, the Council shall authorize by resolution the sale or other disposition of such real estate. No sale or conveyance shall be deemed authorized except as provided in the authorizing resolution.
- (b) *Appraisal required.* Prior to the sale or other disposition of any Town-owned real property, an appraisal shall be obtained unless the Town Council finds that, due to exigent or other circumstances, an appraisal would not be in the best interest of the Town. For platted, undeveloped residential property, a recent appraisal of comparable property located in the same vicinity of the subject property may be utilized to satisfy the appraisal requirement. For purposes of this section, a "recent" appraisal shall mean one that was prepared not more than twelve (12) months prior to the proposed date of sale or other disposition.

Sec. 2-116.3. Acceptance of donations.

Donations other than sponsorships of Town events, with an estimated value exceeding one thousand dollars (\$1,000.00), shall be approved by the Town Council prior to acceptance.

SECTION 3. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 4. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or Town law, rule, code, or regulations, the more restrictive shall apply.

SECTION 5. Inclusion in Code. It is intention of the Town Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

SECTION 6. Effective Date. This Ordinance shall take effect immediately upon passage and adoption.

The foregoing Ordinance was moved for adoption by Council Member Val. The motion was seconded by Council Member Acquaviva and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva

Aye

Council Member Brian Vail

Aye

Council Member Steve Rivet

Aye

Council Member David Scardino

Aye

Council Member Mary Hofmeister

Aye

This ordinance was then declared duly passed and adopted this 18th day of April 2022.

TOWN OF MALABAR

By: Patrick T. Reilly
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin

Debby K. Franklin, C.M.C., Town Clerk/Treasurer



Approved for Legal Sufficiency:

Karl Bohne, Jr.

Karl Bohne, Jr, Town Attorney

First Reading: 04/04/2022 Vote 4 to 0

Second Reading: 04/18/2022

TOWN OF MALABAR

COUNCIL MEETING

AGENDA ITEM NO: 12.a.

Meeting Date: April 4, 2022

Prepared By: Lisa Morrell, Special Projects Manager
Through: Matthew Stinnett, Town Manager,
Debby Franklin, Town Clerk,
Karl Bohne, Town Attorney

SUBJECT: Amend Chapter 2 of Malabar Code of Ordinance Pertaining to Procurement (Ordinance 2022-3)

BACKGROUND/HISTORY:

The Procurement Code in Article V. has not been updated since 2009 and has only two components adopted. One requires Town Council approval for purchases in "excess of \$10,000", after obtaining (3) quotes or advertising a request for bid and award to the lowest and best bidder. The other defines the use of other agency awarded contract, commonly referred to as a piggyback contract, in excess of \$2,000; the Town Manager has the sole authority to approve the use and purchase. The code is inefficient for the Town's public purchasing needs and lacks updates that are commonly used in other agencies in the State of Florida. Staff requests for the current code sections to be repealed and amended to provide more definition to provide different methods of purchasing for types of goods and services, modifications of threshold amounts, balance of authorities, approvals, and oversight within a smaller number of staff for the execution of contractual purchase of goods and services as necessary to service the public now and in the future.

In summary, Ordinance 2022-03 will substantially amend the code for the procurement process to be used by all Town staff for adherence and guidance to provide efficient and transparent methods to operate and serve the town's needs with the open marketplace, contractors, and other agency awarded contracts. Threshold amounts will be augmented to efficiently purchase day to day operational purchases up to \$2,000, requires (3) written quotes for purchases between \$2001 and \$19,999, and a formal method for purchases in excess of \$20,000. All methods have an established process and authorities of either the Town Manager, in coordination with the Town Clerk/Treasurer, and Town Council approvals as required for certain purchases, awards of formal processes, execution of certain contracts, receipt of donations, and surplus of public property.

ATTACHMENTS:

Ordinance 2022-03

FINANCIAL IMPACT:

N/A

ACTION OPTIONS:

Motion to approve Ordinance 2022-03, repealing section 2-101 in its entirety and replacing with a new section 2-101 through 2-116 providing for policies and procedures related to all aspects of the procurement process; providing for delegation of duties, providing for supervision, responsibility, and authority; providing for severability, conflicts, codification and an effective date.