

ORDINANCE NO. 2008-016

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA AMENDING CERTAIN PROVISIONS OF CHAPTER 105, THE COUNTY'S COUNTY PURCHASING ORDINANCE; PROVIDING FINDINGS; AMENDING SECTIONS 105.01 AND 105.02 OF THE CODE TO CLARIFY THE AUTHORITY OF THE COUNTY ADMINISTRATOR; AMENDING SECTION 105.04 TO CHANGE THE PAYMENT AND PERFORMANCE BOND REQUIREMENT THRESHOLD FROM \$25, 000 [TWENTY-FIVE THOUSAND DOLLARS] TO \$100,000 [ONE HUNDRED THOUSAND DOLLARS] AND TO CLARIFY CERTAIN PROVISIONS CONCERNING BID BONDS AND BIDDERS IN DEFAULT TO THE COUNTY; CREATING A NEW SECTION TO ADOPT AN ENVIRONMENTALLY PREFERRED PROCUREMENT POLICY; PROVIDING FOR REPEAL OF OTHER CONFLICTING ORDINANCES; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF INDIAN RIVER COUNTY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, as follows:

PART I: AMENDMENTS TO CHAPTER 105 of The Code of Indian River County.

Section 1. LEGISLATIVE FINDINGS. It is hereby ascertained, determined, and declared that:

A. Pursuant to Article VIII, Section 1 of the Florida Constitution, and Florida Statutes section 125.01, the Board of County Commissioners of Indian River County ("Board") has all powers of local self-government to perform County functions.

Section 2. AMENDMENTS TO SECTION 105.01. After the effective date of this Ordinance, Section 105.01 of the Code shall be amended to read as follows:

Section 105.01. Authority of county administrator.

Except as otherwise provided by Florida Statutes, the county administrator or his designee is granted authority to purchase or contract for: (a) supplies, materials, equipment, real property, and ~~or~~ services, (other than services under section 287.055, F.S., except as otherwise set forth herein) costing fifty thousand dollars (\$50,000.00) or less; and (b) planning or study activity services obtained pursuant to the "Consultants' Competitive Negotiation Act", Florida Statutes section 287.055, when the fee for such professional services is twenty-five thousand dollars (\$25,000) or less for the county after taking such action as the county administrator shall deem necessary to obtain the best price for the county. Any such purchase or contract may be executed by the county administrator in the name of the county without commission action, although copies of any such contracts shall be available to the commission for inspection. In an emergency, contracts for purchase of parts or repairs to then-existing county equipment

or machinery may be purchased or contracted by the county administrator in his capacity as the county administrator, provided the county administrator certifies that a true emergency exists, and routes a copy of the purchase order or contract to the commission for its inspection with a memorandum describing the emergency situation.

Section 3. AMENDMENTS TO SECTION 105.02. After the effective date of this Ordinance, Section 105.02 of the Code shall be amended to read as follows:

Section 105.02. County commission.

Any county purchase of supplies, material, equipment, or services in excess of the authority provided in section 105.01 or the Purchasing Policies and Procedures Manual, and services (other than as delegated in section 105.01) obtained pursuant to the "Consultants' Competitive Negotiation Act", ~~subject to~~ section 287.055, F.S., shall be approved by the county commission. Purchase orders of fifty thousand dollars (\$50,000.00) or less may be executed by the county administrator. If a formal written, integrated contract, in excess of fifty thousand dollars (\$50,000.00), is required for such purchases, said contract shall be signed by the chairman, the clerk, and the county administrator, and approved as to form and legal sufficiency by the county attorney. Any purported contract not so executed shall be void ab initio and shall have no force and effect whatsoever. The county commission may enter into contracts under this paragraph based on the recommendations of the county administrator, bidding procedures, or such other methods that the commission determines are in the best interest of the county. In addition, the county commission may direct the county administrator to take several bids and negotiate with these bidders to obtain an offer that is more advantageous to the county.

Section 4. AMENDMENTS TO SECTION 105.04. After the effective date of this Ordinance, Section 105.04 of the Code shall be amended to read as follows:

Section 105.04. Bidding procedures.

The following bidding procedures shall be followed if bidding is used and the procedures are not otherwise modified:

(a) Public Notice inviting bids to Solicit Competitive Bids or Proposals/Advertisement. Any public notice to solicit competitive bids or proposals/advertisement notice for bids shall be considered an invitation to potential bidders to submit offers to the county in conformity with the county's invitation. All bids received shall be considered irrevocable offers until such time as the county commission accepts an offer or rejects the offer as provided for in the bid specifications.

(b) Publication of notice. Public notice of any solicitation of competitive bids or proposals/advertisement shall generally be by publication in at least one newspaper of general circulation in the county and in accordance with Florida Statutes section 255.0525. In addition, the county administrator may solicit bids from prospective bidders.

(c) *Bid bonds and other bid security.*

(1) *Bids under twenty-five thousand dollars (\$25,000.00).* Normally, a bid bond shall not be required; however, if the county administrator determines that a bid bond is desirable in a particular instance the solicitation of competitive bids or proposals/advertisement public notice inviting bids shall specify the requirement for a bid bond and the ~~procedures in subparagraphs (2) and (3)~~ of this paragraph shall apply.

(2) *Bids twenty-five thousand dollars (\$25,000.00) or over.* Bid bonds equal to five (5) percent of the total bid amount shall be submitted with each bid unless the public notice soliciting competitive bids or proposals/advertisement inviting bids specifies that a bid bond is not necessary. Unsuccessful bidders shall be entitled to return of the bid bond surety after no later than the final award of bid. The county shall retain the bid bond of a successful bidder shall forfeit any surety given upon failure by the successful bidder on his part to execute and deliver enter a contract and, where applicable, the required payment and performance bonds within fifteen (15) to (10) days after receipt of a proposed contract from the County, unless such time is extended by the county administrator.

(3) ~~[Bid Security Options in lieu of bid bond.] See paragraph (h)(3) of this section for options.~~ Any bidder may submit a certified check or a cashier's check, drawn on any bank authorized to do business in the State of Florida in an amount equal to five (5) percent of the total bid amount as bid security in lieu of a bid bond. The county shall retain the bid security of a successful bidder upon failure by the successful bidder to execute and deliver a contract and, where applicable, the required payment and performance bonds within fifteen (15) days after receipt of a proposed contract from the County, unless such time is extended by the county administrator.

(d) *Bid opening procedures:*

(1) *Sealed.* Bids shall be submitted sealed and shall be identified as bids on the envelope.

(2) *Opening.* Bids shall be opened in public at the time and place stated in the public notice.

(3) *Tabulation.* A tabulation of all bids received shall be available for public inspection.

(e) *Rejection of bids.* The county commission shall have the authority to reject any or all bids, parts of any or all bids, or any or all bids for any one or more supplies or contractual services included in the proposed contract, when the public interest shall be served thereby. Further, after rejection of all bids, the county commission may republish for new bids. County administrator shall have this same authority with respect to bids for contracts under the purchasing authority of the county administrator. (Section 105.01)

(f) *Bidders in default to county.* The county commission may reject the bid of a contractor, vendor, or other service provider who is in default on the payment of taxes, licenses, or other monies due the county. The county administrator shall have this same authority with respect to bids for contracts under the purchasing authority of the county administrator. (Section 105.01)

(g) *Award of contract.* The county commission after review of bids received may award the contract to the bidder who, in the view of the county commission, has submitted the bid that is in the overall best interest of the county. The county administrator shall have this same authority with respect to submittals and bids for contracts under the purchasing authority of the county administrator. (Section 105.01)

(h) *Payment and performance bonds.*

(1) ~~Contracts under twenty-five one-hundred thousand dollars (\$25 \$100,000.00).~~ Normally, payment and performance bonds shall not be required; however, if the county administrator determines that payment and performance bonds are desirable in a particular instance, the public notice ~~inviting bids~~ soliciting competitive bids or proposals/advertisement shall specify the requirements for payment and performance bonds and ~~the procedures in subparagraphs (2), and (3), and (4) of this paragraph shall apply.~~ Except for a contract subject to paragraph (i), when there is no bond requirement the county shall make only one payment for the entire amount when the terms of the contract have been fulfilled.

(2) ~~Contracts twenty-five one-hundred thousand dollars (\$25 \$100,000.00) and or over.~~ Payment bonds equal to one hundred (100) percent of the contract price and performance bonds equal to one hundred (100) percent of the contract price shall be provided by the successful bidder at the time of the execution of the contract. The public notice soliciting competitive bids or proposals/advertisement ~~inviting bids~~ shall specify the requirements for payment and performance bonds.

(3) ~~Payment and Performance Bond requirements.~~ ~~The~~ Each payment and performance bond shall be provided by a surety company authorized to do business in the State of Florida. In lieu of a bond, the county will accept as security cash, certified check, cashier's check or an irrevocable letter of credit. The check or letter of credit shall be drawn on or issued by a bank authorized to do business in the State of Florida. See the provisions of Section 255.05 F.S. The bond shall remain in effect for at least thirty (30) days after final completion.

(4) ~~Security in lieu of Payment and Performance Bonds.~~ In lieu of the bond required by this subparagraph (h) a contractor may file with the county an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, or an irrevocable letter of credit. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the payment and performance bonds required by this subparagraph (h). The determination of the value of an alternative form of security shall be made by the county administrator.

(i) *Waiver of bonds.* At the time of award of contract, the county may waive the requirement for payment and performance bonds and the cost of said bonds shall be deducted from the contract price.

(j) ~~*Payment when bond of this section not required.*~~ ~~Except for a contract subject to paragraph (i), when there is no bond requirement the county shall make only one~~

~~payment for the entire amount when the terms of the contract have been fulfilled.~~[moved]

(jk) *Waiver of bidding procedures.* The county commission may waive or modify the bidding procedure on specific contracts.

Section 5. CREATION OF NEW SECTION 105.10. After the effective date of this Ordinance, Section 105.10 of the Code is created to read as follows:

Section 105.10. Environmentally Preferred Procurement Policy.

The County is committed to the procurement of products and services that minimize negative environmental and social impacts and emphasize long-term values. Preference shall be given to products and services that have a lesser or reduced effect on human health and the environment when compared to other products and services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

PART II: GENERAL PROVISIONS

SECTION 1: SEVERABILITY. If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

SECTION 2: REPEAL OF CONFLICTING ORDINANCES. The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION 3: INCLUSION IN THE CODE OF LAWS AND ORDINANCES. The provisions of this Ordinance shall become and be made a part of The Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION 4: EFFECTIVE DATE. This Ordinance shall become effective on filing with the Department of State.

[remainder of page left blank intentionally]

ORDINANCE NO. 2008-016 _____

This Ordinance was advertised in the Vero Beach Press Journal on September 26, 2008, for a public hearing to be held on October 7, 2008. During the October 7, 2008, public hearing, this Ordinance was moved for adoption by Commissioner Wesley S. Davis, and seconded by Commissioner Joseph E. Flescher, and adopted by the following vote:

Chairman Sandra L. Bowden	<u> Aye </u>
Vice Chairman Wesley S. Davis	<u> Aye </u>
Commissioner Joseph E. Flescher	<u> Aye </u>
Commissioner Peter D. O'Bryan	<u> Aye </u>
Commissioner Gary C. Wheeler	<u> Aye </u>

DULY PASSED AND ADOPTED THIS 7th DAY OF OCTOBER, 2008.

INDIAN RIVER COUNTY
BOARD OF COUNTY COMMISSIONERS

Attest: J.K. Barton, Clerk

By Athena Adams
Deputy Clerk

By Sandra L. Bowden
Sandra L. Bowden, Chairman

Indian River Co.	Approved	Date
Admin.	<u>(B)</u>	<u>10/1/08</u>
Legal	<u>[Signature]</u>	<u>9/30/08</u>
Budget	<u>[Signature]</u>	<u>9/30/08</u>
Dept.	<u>[Signature]</u>	<u>9/30/08</u>
Risk Mgr.		

Approved:
Joseph A. Baird
Joseph A. Baird, County Administrator

Approved as to form and legal sufficiency:
[Signature]
Marian E. Fell,
Senior Assistant County Attorney

EFFECTIVE DATE: This Ordinance was filed with the Department of State on the _____ day of October, 2008, and is effective on October _____, 2008.