

BOARD OF COUNTY COMMISSIONERS

DATE: February 11, 2014

AGENDA ITEM NO. 4a.-c.

Consent Agenda ☐

Regular Agenda ☐

Public Hearing ☒

County Administrator's Signature:

Subject:

Ordinance Amending Sections 2-62, 2-161, 2-162, 2-176, 2-177 and 2-189 of the Pinellas County Code Relating to Purchasing; Elimination of Board of County Commissioner Approval Process for Ranking Vendors in Competitive Procurements.

Department:

Office of County Attorney / Purchasing

Staff Member Responsible:

Dennis Long / Joe Lauro

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BOARD): A) CONDUCT A PUBLIC HEARING AND APPROVE ORDINANCES AMENDING SECTIONS 2-62, 2-161, 2-162, 2-176, 2-177 AND 2-189 OF THE PINELLAS COUNTY CODE RELATING TO PURCHASING; AND B) APPROVE ELIMINATING THE BOARD APPROVAL OF VENDOR RANKINGS FOR COMPETITIVE PROCUREMENTS.

Summary Explanation/Background:

On January 28, 2014, the Board approved authority to advertise for a public hearing the attached proposed ordinances amending sections 2-62, 2-161, 2-162, 2-176, 2-177 and 2-189 of the Pinellas County Code relating to the purchasing and contracting process. The recommendation to amend the County Code in an effort to improve County contracting processes is a result of the work of the Contract Administration Review Team (CART), which was established and started meeting in December 2012.

The goals of CART include improving efficiencies in the contract administration process while maintaining internal controls and accountability for both staff and parties that contract with the County. The deliverables supporting this effort include establishing enterprise contract administration guiding principles; revising ordinances, policies and procedures to increase efficiencies; creating a contract administration manual; and establishing a staff training program.

On October 29, 2013, Dennis Long and Joe Lauro provided recommendations to the Board on behalf of CART pertaining to proposed improvements to the purchasing and contract administration process. Most of the recommendations were positively received; some recommendations were modified based upon Board input and comment. The Board subsequently agreed to advertise for public hearing on January 28, 2014, the following recommended modifications to County Code to effect efficiencies in the contracting process:

1. Section 2-62 – (Approval Authority) – Enables the County Administrator to approve change orders not exceeding 10% of the amount awarded by the Board or \$250,000, whichever is less. This modification will greatly expedite contract closeouts and provide improved efficiency to many contract change orders that now require Board approval. In addition, other sub-sections of Section 2-62 have been modified to update language reflecting current business process. While Section 2-62(a)(6) has been amended to eliminate the requirement that all contracts/instruments be filed with the Clerk in anticipation of the establishment of an electronic contracts repository and automated agenda process, no changes will be made to the current process related to filings with the Clerk's office until those systems are implemented.

2. Section 2-161 – (Bidder Suspension and Debarment) – This entire section of Code has been substantially revised to allow for suspensions of vendors by the Purchasing Director so that non-performing firms may be penalized for poor performance in a more expedient and effective manner. Suspensions shall be based on documented contracting issues such as breach of contract, vendor misrepresentation, criminal offense, fraud and conviction of a public entity crime.
3. Section 2-162 – (Protest Procedure) – Clarifies sections of the current protest policy which were open to interpretation such as the window of opportunity for protest and which portions of competitive processes that can be protested.
4. Section 2-176 – (Competitive Sealed Bidding) – Clarifies the authority of the County Administrator to reject all bids or portions of bids.
5. Section 2-177 – (Competitive Sealed Proposals) – Clarifies the authority of the County Administrator to reject all proposals or portions of proposals.
6. Section 2-189 – (Lobbying) – Adds “advisory board members” to lobbying code and further updates language in this section of code.

While not required by the Purchasing Code, the Board has historically approved the rankings of firms, authorized staff to negotiate a contract and return to the Board for approval of the negotiated contract as part of the Request for Proposal (RFP) process. This process conservatively adds four to six weeks to the contracting process. CART recommends the elimination of this process for all contracts (including Consultant Competitive Negotiation Act) except for: a) operating agreements for the Waste to Energy Plant; b) Emergency Medical Services Transport; c) other contracts as necessary or required. This improvement to the contracting process will greatly expedite competitive RFP’s while also maintaining essential internal controls to ensure the Board is considering the approval of contracts with firms that are qualified and responsible.

In addition to the revisions to County Code and vendor ranking recommendation, CART also recommends revising several long-standing procedures which are not codified, but have a direct impact to County Contracting processes. These procedural modifications set out in 1 and 2 below do not require action by the Board; however, this information has been provided to the Board to inform of positive internal changes which will ultimately provide goods and services more efficiently to the residents of Pinellas County:

1. Contract Review – CART updated the contract review process identifying contracts and amendments that are no longer subject to the contract review process. This modification of procedure eliminates steps in the process, eliminates redundant reviews and greatly simplifies the entire contracting process. In unison, another County team is working to develop a scope of work to purchase agenda automation software which will include automated contract review. The combination of automation and revision to the contract review procedure will affect substantial time savings in the contracting process as compared to current procedure.
2. Master Contracts – CART, in conjunction with the Office of the County Attorney, has drafted master bid/RFP boilerplates and agreements which contain standard terms and conditions eliminating redundancy and inconsistency from current agreement and bid/RFP boiler plates. This improvement will greatly reduce negotiation time, provides for a more concise contracting process and more importantly is the “driver” behind the recommendation to revise the contract review process. With consistent agreement bid/RFP boilerplates, the need for contract review has been greatly reduced and in some instances, is no longer necessary.

The recommendations reflected above are an accumulation of many hours of dedicated work by the cross organizational CART team. This is the beginning of process improvement by CART, a team which is currently active to provide future recommendations and improvements to the County contracting process.

Fiscal Impact/Cost/Revenue Summary:

N/A

Exhibits/Attachments Attached:

Proposed Ordinances (Blackline and Final)
List of CART Members
Memo Regarding Firm Ranking

ORDINANCE NO. 14-_____

AN ORDINANCE OF THE COUNTY OF PINELLAS AMENDING CHAPTER 2, ARTICLE V OF THE PINELLAS COUNTY CODE ("CODE") RELATING TO COMPETITIVE PURCHASES; AMENDING SECTION 2-161 OF THE CODE RELATING TO THE INTEGRITY OF PUBLIC CONTRACTING, SUSPENSION AND DEBARMENT OF VENDORS; AMENDING SECTION 2-162 OF THE CODE RELATING TO THE PROTEST PROCEDURE; AMENDING SECTION 2-176(g) OF THE CODE RELATING TO REJECTION OF BIDS; ADDING SECTION 2-177(g) OF THE CODE RELATING TO REJECTION OF PROPOSALS; AMENDING SECTION 2-189 RELATING TO LOBBYING DURING COMPETITIVE PROCUREMENT PROCESS; PROVIDING FOR CODIFICATION; PROVIDING FOR FILING; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY in a meeting duly assembled this _____ day of _____ 2014, that:

Section 1. Section 2-161(b) of the Pinellas County Code is hereby amended to read as follows:

Sec. 2-161. Bidder qualifications and prequalifications; suspension and debarment.

(b) *Integrity of public contracting; purchasing authority to suspend or debar.* Maintaining the integrity of the public contracting and purchasing process is vital and a matter of great public interest. Selecting and contracting with highly qualified persons or entities ("vendors") that engage in ethical and responsible business practices protects the public and supports the integrity of the public contracting and procurement process. Because the opportunity to participate in competitive procurements or to supply goods or services to the county is a privilege, not a right, this privilege should be denied to persons or entities that engage or are involved in activities or actions as described herein that adversely impact the quality of goods and services provided to the county for the benefit of the public. In those instances, it is in the best interests of the public to disqualify vendors by suspension or debarment from inclusion on future vendor lists or from consideration for award of new contracts, work, or any work assignments on existing contracts, based upon documentation that the grounds for suspension or debarment as provided herein exist.

- (1) Suspension. A vendor shall be suspended for a period of two (2) years or until the conditions described herein have been rectified or resolved, whichever occurs first, as determined by the purchasing director based upon the following:
 - a. The county has formally declared the vendor in breach of a contract that has resulted in the termination of the contract by the county for failure to comply with the conditions, specifications or terms of a contract with the county; or
 - b. The county has formally disqualified or declared a vendor's bid, quotation, or proposal nonresponsive, based on the vendor's fraud or misrepresentation; or
 - c. The vendor is charged by a court of competent jurisdiction with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; or is charged by a court of competent jurisdiction with the following: embezzlement, theft, forgery, bribery, fraud, 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 county government contractor; or
 - d. The vendor becomes insolvent, has proceedings in bankruptcy instituted against it, or has a receiver or trustee appointed over its property; or
 - e. The vendor has three or more violations of the code as defined in section 1-8 of the code in any two-year period arising from or related to vendor's business activities, as determined in a court or administrative proceeding, including by plea; or
 - f. The vendor and the county are engaged in adversarial proceedings (i.e., court proceedings, arbitration, or administrative proceeding) arising from or related to the vendor's performance of a contract with the county; or
 - g. The vendor is suspended by another government entity.
- (2) Debarment. A vendor shall be permanently debarred by the purchasing director based on the following:
- a. The county obtains a judgment in an adversarial proceeding between the county and the vendor (i.e. court proceeding, arbitration, or administrative proceeding) arising from the vendor's performance of a contract with the county which remains unsatisfied for a period of 30 days from the expiration of any appeal period or final resolution of any appeal; or
 - b. Vendor conviction by or judgment obtained in a court of competent jurisdiction for commission of those offenses in connection with the vendor's business activities stated in subsection (b)(1)c above.
 - c. Vendor is debarred by another government entity.
- (3) Public entity crime. Notwithstanding any other provision herein, any vendor who has been convicted of a public entity crime as defined by §287.133, Florida Statutes, shall not be able to transact business with the county to the extent as specified in the statute.
- (4) Decision. The purchasing director shall issue a written notification to suspend or debar based on documentation of the existence of one or more of the conditions described herein. The suspension or debarment shall take effect as of the date of the notification. The notification shall state the basis for the action taken and the period of the suspension, or that the vendor has been debarred. Prior to issuance of written notification, the purchasing director may schedule an informational meeting with the vendor to review the documentation supporting the suspension or debarment. The only issue that shall be considered at the informational meeting is whether the condition giving rise to the suspension or debarment has occurred or taken place.
- (5) Effects of suspension and debarment.
- a. Suspended or debarred vendors are excluded from receiving any new contracts, awards or otherwise providing new goods or additional services during the period of suspension or during debarment; from having any bids, proposals, quotations or qualifications considered by the county or responding to other solicitations of the county; and from conducting business with the county as a subcontractor, representative, or joint venturer of other vendors. For the purposes of this subsection (5)a, "new goods or additional services" does not include goods or services provided by the vendor pursuant to a contract, purchase order or work assignment in effect as of the date of suspension.

- b. Any business entity controlled by or affiliated with any vendor ineligible for new business pursuant to subsection (5)a may also be prohibited from contracting with the county if the relationship or affiliation is such that the person or business entity by reason of the relationship with the ineligible person or entity could directly benefit from the contract. Such factors as ownership interest, one or more members of the board of officials in common, control of one entity by the other, interlocking or shared management or principals, and limited management and ownership among family members, shall be considered in determining ineligibility under this section of this article.
- (6) Reinstatement. After suspension or debarment, a vendor is not eligible to contract or be awarded work with Pinellas County until reinstated by the purchasing director. The vendor must supply information and reasonable documentation indicating that the conditions causing the suspension or debarment have been rectified or resolved. If the charges referenced in subsection (b)(1)c are dismissed or the vendor is found not guilty, the suspension shall be lifted automatically upon written notification and proof of final court disposition provided by the vendor to the county. If the conviction or judgment referenced in subsection (b)(2)b is reversed through the appellate process, the debarment shall be removed immediately upon written notification and proof of final court disposition from the vendor to the county. As a condition of reinstatement, and with approval of the county administrator, the purchasing director may limit the nature and scope of contractual undertakings that must be satisfactorily completed before seeking additional contracts from the county. Nothing herein prevents the county from granting reinstatement prior to the end of the suspension period or debarment where, in the purchasing director's judgment, the county's interests have been addressed and the vendor to be reinstated is not likely to engage in similar conduct again.

Section 2. Section 2-162 of the Pinellas County Code is hereby amended to read as follows:

Sec. 2-162. Protest procedure.

(a) *Right to protest.* Any prospective bidder or proposer who is aggrieved by the contents of the bid or proposal package, or any bidder or proposer who is aggrieved in connection with the recommended award on a bid or proposal solicitation, may file a written protest to the director of purchasing as provided herein. This right to protest is strictly limited to those procurements of goods or services solicited through invitations to bid or requests for proposals, including solicitations pursuant to § 287.055, Florida Statutes, the "Consultants' Competitive Negotiation Act." No other actions or recommendations in connection with a solicitation can be protested, including: (i) requests for quotations or requests for qualifications; (ii) rejection of some, all or parts of bids or proposals; (iii) disqualification of bidders or proposers as non-responsive or nonresponsible; or (iv) recommended awards less than the mandatory bid or proposal amount. Protests failing to comply with the provisions of this section 2-162 shall not be reviewed.

(b) *Posting.* The purchasing department shall post the recommended award on the departmental website no less than five (5) full business days after the decision to recommend the award is made.

(c) *Requirements to protest.*

- (1) If the protest relates to the content of the bid/proposal package, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after issuance of the bid/proposal package.
- (2) If the protest relates to the recommended award of a bid or proposal, a formal written protest must be filed no later than 5:00 p.m., on the fifth full business day after posting of the award recommendation.
- (3) The formal written protest shall identify the protesting party and the solicitation involved; include a statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances or other legal authorities which the protesting party deems applicable to such grounds; and specifically request the relief to which the protesting party deems itself entitled by application of such authorities to such grounds.
- (4) A formal written protest is considered filed with the county when the purchasing department receives it. Accordingly, a protest is not timely filed unless it is received within the time specified above by the purchasing department. Failure to file a formal written protest within the time period specified shall constitute a waiver of the right to protest and result in relinquishment of all rights to protest by the bidder/proposer.

(d) *Rights of interested parties.* Bidders or proposers, other than the protestor, which would be directly affected by the favorable resolution of a protest relating to a recommended award, shall have the right to provide written documentation related to the protested solicitation. Said interested parties shall be solely responsible for determining whether a protest has been filed. Any documentation submitted by an interested party must be filed with the director of purchasing no later than 5:00 p.m. on the fifth full business day after the purchasing department posts notification that a protest has been filed. Any interested party submitting documentation shall bear all costs, including legal representation, relating to the submission.

(e) *Sole remedy.* These procedures shall be the sole remedy for challenging the content of the bid or proposal package or the recommended award.

(f) *Lobbying.* Protestors, and interested parties as defined subsection (d), and anyone acting on their behalf, are prohibited from attempts to influence, persuade, or promote a bid or proposal protest through any other channels or means, and contacting any Pinellas County official, employee, advisory board member, or representative to discuss any matter relating in any way to the solicitation being protested, other than the purchasing department's or county attorney's office employees. The prohibitions provided for herein shall begin with the filing of the protest and end upon the final disposition of the protest; provided however, at all times protestors shall be subject to the procurement lobbying prohibitions in section 2-189 of this code. Failure to adhere to the prohibitions herein shall result in the rejection of the protest without further consideration.

(g) *Time limits.* The time limits in which protests must be filed as specified herein may be altered by specific provisions in the bid/request for proposal.

(h) *Authority to resolve.* The director of purchasing shall resolve the protest in accordance with the documentation and applicable legal authorities and shall issue a written decision to the protestor no later than 5:00 p.m. on the tenth full business day after the filing thereof.

(i) *Review of purchasing director's decision.*

- (1) The protesting party may request a review of the purchasing director's decision to the county administrator by delivering written request for review of the decision to the director of purchasing by 5:00 p.m. on the fifth full business day after the date of the

written decision. The written notice shall include any materials, statements, and arguments which the bidder/proposer deems relevant to the issues raised in the request to review the decision of the purchasing director.

- (2) The county administrator shall issue a decision in writing stating the reason for the action with a copy furnished to the protesting party no later than 5:00 p.m., on the seventh full business day after receipt of the request for review. The decision shall be final and conclusive as to the county unless a party commences action in a court of competent jurisdiction.

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

Section 3. Section 2-176(g) of the Pinellas County Code is hereby amended to read as follows:

Section 2-176. Competitive sealed bidding.

(g) *Rejection of bids.* The respective constitutional officer, county administrator on behalf of the board of county commissioners or within his/her delegated financial approval authority, or director of purchasing within his/her delegated financial approval authority shall have the authority, when the public interest will be served thereby, to reject all bids or parts of bids at any stage of the procurement process through the award of a contract.

Section 4. Section 2-177 of the Pinellas County Code is hereby amended by adding subsection (g) to read as follows:

Section 2-177. Competitive sealed proposals.

(g) *Rejection of proposals.* The respective constitutional officer, county administrator on behalf of the board of county commissioners or within his/her delegated financial approval authority, or director of purchasing within his/her delegated financial approval authority shall have the authority, when the public interest will be served thereby, to reject all or any parts of proposals at any stage of the procurement process through the award of a contract.

Section 5. Section 2-189 of the Pinellas County Code is hereby amended to read as follows:

Sec. 2-189. Lobbying.

Lobbying shall be prohibited on all county competitive selection processes and purchasing contract awards pursuant to this division, including, but not limited to, requests for proposals, requests for quotations, requests for qualifications, bids or the award of purchasing contracts of any type. The purpose of this prohibition is to protect the integrity of the procurement process by shielding it from undue influences prior to the contract award, or the competitive selection process is otherwise concluded. However, nothing herein shall prohibit a prospective bidder/proposer/protestor from contacting the purchasing department or the county attorney's office to address situations such as clarification and/or pose questions related to the procurement process.

Lobbying of evaluation committee members, county government employees, elected/appointed officials, or advisory board members regarding requests for proposals, requests for quotations, requests for qualifications, bids, or purchasing contracts, by the bidder/proposer, any member of the bidder's/proposer's staff, any agent or representative of the bidder/proposer, or any person employed by any legal entity affiliated with or representing a bidder/proposer/protestor, is strictly prohibited from the date of the advertisement, or on a date otherwise established by the board of county

commissioners, until either an award is final, or the competitive selection process is otherwise concluded. Any lobbying activities in violation of this section by or on behalf of a bidder/proposer shall result in the disqualification or rejection of the proposal, quotation, statement of qualification, bid or contract.

For purposes of this provision, lobbying shall mean influencing or attempting to influence action or non-action, and/or attempting to obtain the goodwill of persons specified herein relating to the selection, ranking, or contract award in connection with any request for proposal, request for quotation, request for qualification, bid or purchasing contract through direct or indirect oral or written communication. The final award of a purchasing contract shall be the effective date of the purchasing contract.

Any evaluation committee member, county government employee, elected/appointed official, or advisory board member who has been lobbied shall immediately report the lobbying activity to the director of purchasing.

Section 6. Severability.

If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

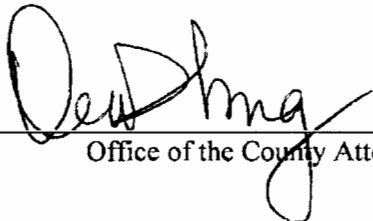
Section 7. Codification.

The provisions of this Ordinance shall be included and incorporated in the Pinellas County Code as an addition thereto, and shall be appropriately numbered to conform to the uniform system of the Code.

Section 8. Filing of Ordinance; Effective Date.

Pursuant to Section 125.66, Florida Statutes, this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after the enactment by the Board of County Commissioners. This Ordinance shall take effect upon filing of the Ordinance with the Department of State.

APPROVED AS TO FORM

By: 
Office of the County Attorney

ORDINANCE NO. 14-_____

AN ORDINANCE OF THE COUNTY OF PINELLAS AMENDING CHAPTER 2, ARTICLE V OF THE PINELLAS COUNTY CODE ("CODE") RELATING TO COMPETITIVE PURCHASES; AMENDING SECTION 2-161 OF THE CODE RELATING TO THE INTEGRITY OF PUBLIC CONTRACTING, SUSPENSION AND DEBARMENT OF VENDORS; AMENDING SECTION 2-162 OF THE CODE RELATING TO THE PROTEST PROCEDURE; AMENDING SECTION 2-176(g) OF THE CODE RELATING TO REJECTION OF BIDS; ADDING SECTION 2-177(g) OF THE CODE RELATING TO REJECTION OF PROPOSALS; AMENDING SECTION 2-189 RELATING TO LOBBYING DURING COMPETITIVE PROCUREMENT PROCESS; PROVIDING FOR CODIFICATION; PROVIDING FOR FILING; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY in a meeting duly assembled this _____ day of _____ 2014, that:

Section 1. Section 2-161(b) of the Pinellas County Code is hereby amended to read as follows:

Sec. 2-161. Bidder qualifications and prequalifications; suspension and debarment.

(b) Integrity of public contracting; purchasing authority to suspend or debar. Maintaining the integrity of the public contracting and purchasing process is vital and a matter of great public interest. Selecting and contracting with highly qualified persons or entities ("vendors") that engage in ethical and responsible business practices protects the public and supports the integrity of the public contracting and procurement process. Because the opportunity to participate in competitive procurements or to supply goods or services to the county is a privilege, not a right, this privilege should be denied to persons or entities that engage or are involved in activities or actions as described herein that adversely impact the quality of goods and services provided to the county for the benefit of the public. In those instances, it is in the best interests of the public to disqualify vendors by suspension or debarment from inclusion on future vendor lists or from consideration for award of new contracts, work, or any work assignments on existing contracts, based upon documentation that the grounds for suspension or debarment as provided herein exist.

- (1) Suspension. A vendor shall be suspended for a period of two (2) years or until the conditions described herein have been rectified or resolved, whichever occurs first, as determined by the purchasing director based upon the following:
 - a. The county has formally declared the vendor in breach of a contract that has resulted in the termination of the contract by the county for failure to comply with the conditions, specifications or terms of a contract with the county; or
 - b. The county has formally disqualified or declared a vendor's bid, quotation, or proposal nonresponsive, based on the vendor's fraud or misrepresentation; or
 - c. The vendor is charged by a court of competent jurisdiction with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; or is charged by a court of competent jurisdiction with the following: embezzlement, theft, forgery, bribery, fraud, 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 county government contractor; or
- d. The vendor becomes insolvent, has proceedings in bankruptcy instituted against it, or has a receiver or trustee appointed over its property; or
 - e. The vendor has three or more violations of the code as defined in section 1-8 of the code in any two-year period arising from or related to vendor's business activities, as determined in a court or administrative proceeding, including by plea; or
 - f. The vendor and the county are engage in adversarial proceedings (i.e., court proceedings, arbitration, or administrative proceeding) arising from or related to the vendor's performance of a contract with the county; or
 - g. The vendor is suspended by another government entity.
- (2) Debarment. A vendor shall be permanently debarred by the purchasing director based on the following:
- a. The county obtains a judgment in an adversarial proceeding between the county and the vendor (i.e. court proceeding, arbitration, or administrative proceeding) arising from the vendor's performance of a contract with the county which remains unsatisfied for a period of 30 days from the expiration of any appeal period or final resolution of any appeal; or
 - b. Vendor conviction by or judgment obtained in a court of competent jurisdiction for commission of those offenses in connection with the vendor's business activities stated in subsection (b)(1)c above.
 - c. Vendor is debarred by another government entity.
- (3) Public entity crime. Notwithstanding any other provision herein, any vendor who has been convicted of a public entity crime as defined by §287.133, Florida Statutes, shall not be able to transact business with the county to the extent as specified in the statute.
- (4) Decision. The purchasing director shall issue a written notification to suspend or debar based on documentation of the existence of one or more of the conditions described herein. The suspension or debarment shall take effect as of the date of the notification. The notification shall state the basis for the action taken and the period of the suspension, or that the vendor has been debarred. Prior to issuance of written notification, the purchasing director may schedule an informational meeting with the vendor to review the documentation supporting the suspension or debarment. The only issue that shall be considered at the informational meeting is whether the condition giving rise to the suspension or debarment has occurred or taken place.
- (5) Effects of suspension and debarment.
- a. Suspended or debarred vendors are excluded from receiving any new contracts, awards or otherwise providing new goods or additional services during the period of suspension or during debarment; from having any bids, proposals, quotations or qualifications considered by the county or responding to other solicitations of the county; and from conducting business with the county as a subcontractor, representative, or joint venturer of other vendors. For the purposes of this subsection (5)a, "new goods or additional services" does not include goods or services provided by the vendor pursuant to a contract, purchase order or work assignment in effect as of the date of suspension.

b. Any business entity controlled by or affiliated with any vendor ineligible for new business pursuant to subsection (5)a may also be prohibited from contracting with the county if the relationship or affiliation is such that the person or business entity by reason of the relationship with the ineligible person or entity could directly benefit from the contract. Such factors as ownership interest, one or more members of the board of officials in common, control of one entity by the other, interlocking or shared management or principals, and limited management and ownership among family members, shall be considered in determining ineligibility under this section of this article.

(6) Reinstatement. After suspension or debarment, a vendor is not eligible to contract or be awarded work with Pinellas County until reinstated by the purchasing director. The vendor must supply information and reasonable documentation indicating that the conditions causing the suspension or debarment have been rectified or resolved. If the charges referenced in subsection (b)(1)c are dismissed or the vendor is found not guilty, the suspension shall be lifted automatically upon written notification and proof of final court disposition provided by the vendor to the county. If the conviction or judgment referenced in subsection (b)(2)b is reversed through the appellate process, the debarment shall be removed immediately upon written notification and proof of final court disposition from the vendor to the county. As a condition of reinstatement, and with approval of the county administrator, the purchasing director may limit the nature and scope of contractual undertakings that must be satisfactorily completed before seeking additional contracts from the county. Nothing herein prevents the county from granting reinstatement prior to the end of the suspension period or debarment where, in the purchasing director's judgment, the county's interests have been addressed and the vendor to be reinstated is not likely to engage in similar conduct again.

~~(b) Debarment.~~

~~(1) Purpose. The county shall solicit offers from, award contracts to and consent to subcontracts with responsible contractors only. To effectuate this policy the debarment of contractors from county work may be undertaken. The serious nature of debarment requires that this sanction be imposed only when it is in the public interest for the county's protection, and not for the purposes of punishment. Debarment shall be imposed in accordance with the procedures contained in this section. Debarment is intended as a remedy in addition to, and not in substitution of, the evaluation of the responsibility of county bidders and contractors, and the rejection or termination of county bidders and contractors based on findings of non responsibility on a case-by-case basis.~~

~~(2) Definitions:~~

~~a. Civil judgment means a judgment or finding of a civil offense by any court of competent jurisdiction.~~

~~b. Contractor means any individual or other legal entity that:~~

- ~~1. Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a county contract for construction or for procurement of goods or services, including professional services; or~~
- ~~2. Conducts business, or reasonably may be expected to conduct business, with the county as an agent, surety, representative or subcontractor of another contractor.~~

3. ~~For the purposes of this section, the terms "vendor" and "consultant" have the same meaning as "contractor." "Subconsultant" has the same meaning as "subcontractor."~~
 - e. ~~Conviction means a judgment or conviction of a criminal offense, be it a felony or misdemeanor, by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.~~
 - d. ~~Debarment means action taken by the debarment committee to exclude a contractor from county contracting and county approved subcontracting for a reasonable, specified period as provided below; a contractor so excluded is debarred.~~
 - e. ~~Debarment committee means a group of at least three members but no more than five members composed of county employees of which one member shall be the purchasing director or his/her designee and assistant county administrator affected by the contract or his/her designee. At the discretion of the committee, a member from private industry with specialization in a particular field of expertise may be asked to join the committee. This member shall not be a direct or indirect competitor of the firm in question. All debarment committee members appointed to a specific debarment committee are prohibited from having any communication with any of the parties involved in the specific debarment, or their representatives. Violation of this policy could lead to termination.~~
 - f. ~~Indictment means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.~~
 - g. ~~Legal proceeding means any civil judicial proceeding to which the county is a party or any criminal proceeding. The term includes appeals from such proceedings.~~
 - h. ~~List of debarred contractors means a list compiled, maintained and distributed by the purchasing department, containing the names of contractors debarred under the procedures of this section.~~
 - i. ~~Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.~~
- (3) ~~List of debarred contractors.~~
- a. ~~The county's purchasing department shall:~~
 1. ~~Compile and maintain a current, consolidated list of all contractors debarred by county departments. Such list shall be public record and available for public inspection and dissemination;~~
 2. ~~Periodically reuse and distribute the list and issue supplements, if necessary or upon request, to all departments, to the office of the county administrator, and to the board of county commissioners;~~
 3. ~~In accordance with internal retention policies and procedures, maintain records relating to each debarment;~~
 4. ~~Establish procedures to provide for the effective use of the list, including internal distribution thereof, to ensure that departments do not solicit bids/proposals from, award contracts to, or subcontract with contractors on the list;~~
 5. ~~Respond to inquiries concerning listed contractors and coordinate such responses with the department that recommended the action.~~
 - b. ~~The list shall include:~~
 1. ~~The names and addresses of all contractors debarred; in alphabetical order;~~
 2. ~~The name of the department recommending initiation of the debarment action;~~
 3. ~~The cause for the debarment action;~~
 4. ~~The effect of the debarment action;~~
 5. ~~The termination date for each listing;~~

6. ~~The name and telephone number of the point of contact in the department recommending the debarment action.~~
- (4) ~~Effects of debarment. Debarred contractors are excluded from receiving contracts, and departments shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the county administrator or his/her designee determines that an emergency exists justifying such action and grants approval for such action. Debarred contractors are also excluded from conducting business with the county as agents, representatives, subcontractors or partners of other contractors.~~
- (5) ~~Continuation of current contracts.~~
- a. ~~Commencing on the effective date of the ordinance from which this section derives, all proposed county contracts for construction, or for procurement of goods and services, including professional services, shall incorporate this section and specify that debarment may constitute grounds for termination of any existing county contract.~~
- b. ~~The debarment shall take effect in accordance with the notice provided by the county administrator pursuant to subsection below, except that if a department continues contracts or subcontracts in existence at the time the contractor was debarred, the debarment period shall commence upon the conclusion of the contract, and in the interim the debarred contractor shall not enter into any county contracts.~~
- c. ~~Departments may not renew or otherwise extend the duration of current contracts, or consent to subcontracts with debarred contractors, unless the county administrator or his/her designee determines that an emergency exists justifying the renewal or extension or for an approved extension due to delay or time extension for reasons beyond the contractors control. Completion of current contracts should be permissible unless otherwise prohibited by the county administrator.~~
- (6) ~~Restrictions on subcontracting.~~
- a. ~~When a debarred contractor is proposed as a subcontractor for any subcontract subject to county approval, the department shall not consent to subcontracts with such contractors unless the county administrator or his/her designee determines that an emergency exists justifying such consent and approves such decision.~~
- b. ~~The county shall not be responsible for any increases in project costs or other expenses incurred by a contractor as a result of rejection of proposed subcontractors pursuant to subsection (6)a. above, provided the subcontractor was debarred prior to bid opening or opening of proposals.~~
- (7) ~~Debarment.~~
- a. ~~The debarment committee may, in the public interest, debar a contractor for any of the causes listed in this section, using the procedures outlined below. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.~~
- b. ~~Debarment constitutes debarment of all officers, principals, directors, partners, qualifiers, divisions, or other organizational elements of the debarred contractor, unless the debarred decision is limited by its terms to specific divisions, organizational elements or commodities. The debarment committee's decision includes any existing affiliates of the contractor, if they are:~~
1. ~~Specifically named; and~~
 2. ~~Given written notice of the proposed debarment and an opportunity to respond. Future affiliates of the contractor are subject to the pre-existing debarment committee's decision.~~
- (8) ~~Causes for debarment.~~
- a. ~~The debarment committee may debar a contractor for a conviction or civil judgment:~~

- ~~1. For commission of a fraud or a criminal offense in connection with detaining, attempting to detain, performing, or making a claim upon a public contract or subcontract, or a contract or subcontract funded in whole or in part with public funds;~~
 - ~~2. For violation of federal or state antitrust statutes relating to the submission of offers;~~
 - ~~3. For commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and~~
 - ~~4. For commission of any other payment or performance related offenses that seriously and directly affect the completion of one or more contracts or the performance of the completed building, project, or goods or services.~~
 - ~~b. The committee may debar a contractor based upon any of the following:~~
 - ~~1. Violation of the terms of a county contract or subcontract, or a contract or subcontract funded in whole or in part by county funds, such as willful failure to perform in accordance with the terms of one or more contracts; or the failure to perform, or unsatisfactory performance of one or more contracts;~~
 - ~~2. Violation of a county ordinance or administrative order such as Pinellas County Code, section 2-189, lobbying; and~~
 - ~~3. Any other cause of so serious or compelling a nature that it affects the responsibility of a county contractor or subcontractor in performing county work.~~
- ~~(9) Debarment procedures:~~
- ~~a. Investigation and referral. Departments shall promptly investigate and prepare written reports concerning a proposed debarment and prepare written requests for the purchasing department for the debarment of contractors the department believes is subject to any of the causes listed above. The purchasing director or his or her designee may investigate, prepare written reports on, and prepare written requests for debarment of contractors or subcontractors.~~
 - ~~b. Upon receipt of a request for debarment, the purchasing department shall create a debarment committee from the standing pool of committee members appointed by the county administrator or his/her designee, none of whose members shall include a representative from the department making the debarment request. The purchasing department shall act as staff to the debarment committee. The department requesting debarment shall present evidence and argument to the debarment committee.~~
 - ~~c. Notice of proposal to debar. The purchasing department, on behalf of the debarment committee, shall issue a notice of proposed debarment advising the contractor and any specifically named affiliates, by certified mail, return receipt requested, or personal service that:~~
 - ~~1. Debarment is being considered;~~
 - ~~2. The reasons and causes for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based; and~~
 - ~~3. The notice shall also describe the effect of the issuance of the notice of proposed debarment and of the potential effect of an actual debarment.~~
 - ~~d. In actions based upon a conviction or judgment, or in which there is not genuine dispute over material facts, the debarment committee shall make a decision on the basis of all the undisputed, material information in the administrative record, including any undisputed, material submissions made by the contractor. Where actions are based on disputed evidence, the debarment committee shall decide what weight to attach to evidence of record, judge the credibility of witnesses, and base its decision on the preponderance of the evidence standard. In the event that the contractor fails to appear at the debarment hearing or to present competent proof under affirmation or oath through persons with direct knowledge of the contractor's performance, the contractor~~

~~shall be presumed to be not responsible and subject to debarment. The debarment committee's decision shall be based on a majority of the members of the committee. The debarment committee shall be the sole trier of fact. The committee's decision shall be made within 20 working days after conclusion of the hearing, unless the debarment committee extends this period for good cause.~~

- ~~e. The committee's decision shall be in writing and shall include the committee's factual findings, the principal causes of debarment as enumerated in this section, identification of the contractor and all affiliates affected by the decision, and the specific term, including duration of the debarment imposed.~~
- ~~f. Notice of debarment committee's decision. If the debarment committee decides to impose debarment, the purchasing director or his/her designee shall give the contractor and any affiliates involved written notice specifying the reasons for debarment and include a copy of the committee's written decision stating the period of debarment, including effective dates, and advise that the debarment is effective throughout the county departments. The contractor then has 72 hours upon receiving written notice to appeal the decision of the debarment committee to the county administrator.~~
- ~~g. If no notice is received by the purchasing department within the 72 hour window then all decisions of the debarment committee shall be final and shall be effective on the date the notice is signed by the purchasing director or his/her designee unless overridden by the county administrator through the debarment appeal process. If the county administrator overrides the decision of the debarment committee, through the appeal process, the county administrator or his/her designee shall state in writing the reasons for its override of the debarment committee's decision.~~

~~(10) Period of debarment.~~

- ~~a. The period of debarment imposed shall be within the sole discretion of the debarment committee. Debarment shall be for a period commensurate with the seriousness of the cause(s), and, where applicable, within the guidelines set forth below, but in no event shall such period exceed five years.~~
- ~~b. The following guidelines in the period of debarment shall apply except:~~
 - ~~1. For commission of an offense as described in subsection (8)a.1.: five years;~~
 - ~~2. For commission of an offense as described in subsection (8)a.2.: five years;~~
 - ~~3. For commission of an offense as described in subsection (8)a.3.: five years;~~
 - ~~4. For commission of an offense as described in subsection (8)a.4.: three to five years;~~
 - ~~5. For commission of an offense as described in subsections (8)b.1. or b2.: three to five years;~~
 - ~~6. For commission of an offense as described in subsection (8)b.3.: three to five years.~~
- ~~c. The debarment committee may, in its sole discretion, reduce the period of debarment, upon the contractor's written request, for reasons such as:~~
 - ~~1. Newly discovered material evidence;~~
 - ~~2. Reversal of the conviction or civil judgment upon which the debarment was based;~~
 - ~~3. Bona fide change in ownership or management;~~
 - ~~4. Elimination of other causes for which the debarment was imposed; or~~
 - ~~5. Other reasons the debarment committee deems appropriate.~~
- ~~d. The debarred contractor's written request shall contain the reasons for requesting a reduction in the debarment period. The purchasing department, with the assistance of the affected department, shall submit a written response thereto. The decision of the debarment committee regarding a request made under this subsection is final and non-appealable.~~

~~(11) Debarment by constitutional officers. In addition to the above-described debarment procedure for contracts with the board, any constitutional officer may debar a bidder for cause from the board's bidder list for that constitutional officer's contracts, based upon the causes and pursuant to the terms and conditions stated by the constitutional officer. The constitutional officer may still participate in the bid, considering only those bids, proposals or quotes from the constitutional officer's amended list.~~

Section 2. Section 2-162 of the Pinellas County Code is hereby amended to read as follows:

Sec. 2-162. Protest procedure.

(a) Right to protest. Any prospective bidder or proposer who is aggrieved by the contents of the bid or proposal package, or any bidder or proposer who is aggrieved in connection with the recommended award on a bid or proposal solicitation, may file a written protest to the director of purchasing as provided herein. This right to protest is strictly limited to those procurements of goods or services solicited through invitations to bid or requests for proposals, including solicitations pursuant to § 287.055, Florida Statutes, the "Consultants' Competitive Negotiation Act." No other actions or recommendations in connection with a solicitation can be protested, including: (i) requests for quotations or requests for qualifications; (ii) rejection of some, all or parts of bids or proposals; (iii) disqualification of bidders or proposers as non-responsive or nonresponsible; or (iv) recommended awards less than the mandatory bid or proposal amount. Protests failing to comply with the provisions of this section 2-162 shall not be reviewed. ~~Bid/proposal protests. Any actual or prospective bidder, proposer, who is allegedly aggrieved in connection with the issuance of a bid/proposal package or pending award of a contract may protest to the director of purchasing.~~

(b) Posting. The purchasing department shall post the recommended formal award on the departmental website. The formal award shall be publicly posted on the purchasing department's website no less than five (5) three full business days after the decision to recommend the award to the bidder/proposer is made.

(c) Requirements to protest.

- (1) If the protest relates to the content of the bid/proposal package, a formal written protest must be filed no later than 5:00 p.m. on the fifth full business day after issuance of the bid/proposal package.
- (2) If the protest relates to the recommended award of a bid or proposal ~~contract~~, a formal written protest must be filed no later than 5:00 p.m., on the fifth full business day after posting of ~~either the contract award recommendation or the contract award itself~~.
- (3) The formal written protest shall identify the protesting party and the solicitation involved; include a ~~clear~~ statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances or other legal authorities which the protesting party deems applicable to such grounds; and specifically request the relief to which the protesting party deems itself entitled by application of such authorities to such grounds.
- (4) A formal written protest is considered filed with the county when the purchasing department, ~~county administrator, or county commission~~ receives it. Accordingly, a protest is not timely filed unless it is received within the time specified above by the purchasing department. Failure to file a formal written protest within the time period specified shall constitute a waiver of the right to protest and result in relinquishment of all rights to protest by the bidder/proposer.

(d) Rights of interested parties. Bidders or proposers, other than the protestor, which would be directly affected by the favorable resolution of a protest relating to a recommended award, shall have the right to provide written documentation related to the protested solicitation. Said interested parties shall be solely responsible for determining whether a protest has been filed. Any documentation submitted by an interested party must be filed with the director of purchasing no later than 5:00 p.m. on the fifth full business day after the purchasing department posts notification that a protest has been filed. Any interested party submitting documentation shall bear all costs, including legal representation, relating to the submission.

(e) Sole remedy. These procedures shall be the sole remedy for challenging the content of the bid or proposal package or the recommended award ~~of bid.~~

(f) Lobbying. ~~Bidder-proposers~~ Protestors, and interested parties as defined subsection (d), and anyone acting on their behalf, are prohibited from attempts to influence, persuade, or promote a bid or proposal protest through any other channels or means, and contacting any Pinellas County official, employee, advisory board member, or representative to discuss any matter relating in any way to the solicitation being protested, other than the purchasing department's or county attorney's office employees. ~~Such attempts shall be cause for suspension in accordance with subsection 2-161(b) of this article.~~ The prohibitions provided for herein shall begin with the filing of the protest and end upon the final disposition of the protest; provided however, at all times protestors shall be subject to the procurement lobbying prohibitions in section 2-189 of this code. Failure to adhere to the prohibitions herein shall result in the rejection of the protest without further consideration.

(ge) Time limits. The time limits in which protests must be filed as specified herein may be altered by specific provisions in the bid/request for proposal.

(hf) Authority to resolve. The director of purchasing shall resolve the protest in accordance with the documentation and applicable legal authorities ~~a fair and equitable manner~~ and shall ~~issue~~ ~~render~~ a written decision to the protestor ~~ant~~ no later than 5:00 p.m. on the ~~fifteenth~~ full business day after the filing thereof.

(ig) Review of purchasing director's decision.

- (1) The protesting party may request a review of the purchasing director's decision to the county administrator by delivering written request for review of the decision to the director of purchasing by 5:00 p.m. ~~On~~ the fifth full business day after the date of the written decision. The written notice shall include any ~~written or physical~~ materials, ~~objects,~~ statements, and arguments, which the bidder/proposer deems relevant to the issues raised in the request ~~to for~~ review the decision of the purchasing director.
- (2) ~~If it is determined that the solicitation or award is in violation of law or the regulations and internal procedures of the purchasing department, the county administrator shall immediately cancel or revise the solicitation or award as deemed appropriate.~~
- (3) ~~If it is determined that the solicitation or award should be upheld, t~~The county administrator shall issue a decision in writing stating the reason for the action with a copy furnished to the protesting party ~~and all substantially affected persons or businesses~~ no later than 5:00 p.m., on the ~~fifteenth~~ full business day after receipt of the request for review. The decision shall be final and conclusive as to the county unless ~~any further action is taken or a~~ party commences action in a court of competent jurisdiction.

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

Section 3. Section 2-176(g) of the Pinellas County Code is hereby amended to read as follows:

Section 2-176. Competitive sealed bidding.

(g) *Rejection of bids.* The respective constitutional officer, county administrator on behalf of the board of county commissioners or within his/her delegated financial approval authority, county administrator or director of purchasing within his/her delegated financial approval authority shall have the authority, when the public interest will be served thereby, to reject all bids or parts of bids at any stage of the procurement process through the award of a contract ~~of bids within their respective delegated financial approval authority.~~

Section 4. Section 2-177 of the Pinellas County Code is hereby amended by adding subsection (g) to read as follows:

Section 2-177. Competitive sealed proposals.

(g) *Rejection of proposals.* The respective constitutional officer, county administrator on behalf of the board of county commissioners or within his/her delegated financial approval authority, or director of purchasing within his/her delegated financial approval authority shall have the authority, when the public interest will be served thereby, to reject all or any parts of proposals at any stage of the procurement process through the award of a contract.

Section 5. Section 2-189 of the Pinellas County Code is hereby amended to read as follows:

Sec. 2-189. Lobbying.

Lobbying shall be prohibited on all county competitive selection processes and purchasing contract awards pursuant to this division, including, but not limited to, requests for proposals, requests for quotations, requests for qualifications, bids or the award of purchasing contracts of any type. The purpose of this prohibition is to protect the integrity of the procurement process by shielding it from undue influences prior to the contract award, ~~a protest is resolved,~~ or the competitive selection process is otherwise concluded. However, nothing herein shall prohibit a prospective bidder/proposer/protestor from contacting the purchasing department or the county attorney's office to address situations such as clarification and/or pose questions related to the procurement process ~~or protest.~~

Lobbying of evaluation committee members, county government employees, ~~or~~ elected/appointed officials, or advisory board members regarding requests for proposals, requests for quotations, requests for qualifications, bids, or purchasing contracts, ~~or bid protests,~~ by the bidder/proposer/~~protestor~~, any member of the bidder's/proposer's/~~protestor's~~ staff, any agent or representative of the bidder/proposer/~~protestor~~, or any person employed by any legal entity affiliated with or representing a bidder/proposer/protestor, is strictly prohibited from the date of the advertisement, or on a date otherwise established by the board of county commissioners, until either an award is final, ~~any protest is finally resolved,~~ or the competitive selection process is otherwise concluded. Any lobbying activities in violation of this section by or on behalf of a bidder/proposer/~~protestor~~ shall result in the disqualification or rejection of the proposal, quotation, statement of qualification, bid or contract, ~~and may lead to debarment of the bidder or proposer/protestor as provided in Pinellas County Code, subsection 2-161(8)b.~~

For purposes of this provision, lobbying shall mean influencing or attempting to influence action or non-action, and/or attempting to obtain the goodwill of persons specified herein relating to the selection, ranking, or contract award in connection with any request for proposal, request for quotation, request for qualification, bid or purchasing contract through direct or indirect oral or written communication. The final award of a purchasing contract shall be the effective date of the purchasing contract.

Any evaluation committee member, county government employee, ~~or~~ elected/appointed official, or advisory board member who has been lobbied shall immediately report the lobbying activity to the director of purchasing.

Section 6. Severability.

If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

Section 7. Codification.

The provisions of this Ordinance shall be included and incorporated in the Pinellas County Code as an addition thereto, and shall be appropriately numbered to conform to the uniform system of the Code.

Section 8. Filing of Ordinance; Effective Date.

Pursuant to Section 125.66, Florida Statutes, this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after the enactment by the Board of County Commissioners. This Ordinance shall take effect upon filing of the Ordinance with the Department of State.