

ORDINANCE NO. 02-17

AN ORDINANCE OF THE TOWN OF INGLIS, FLORIDA,
AMENDING ITS CODE OF ORDINANCES RELATING TO
PURCHASING REQUIREMENTS; DELETING SECTION 2-
262 OF THE TOWN'S CODE OF ORDINANCES;
ADOPTING PURCHASING POLICY; PROVIDING FOR AN
EFFECTIVE DATE

WHEREAS, the Code of Ordinances of the Town of Inglis, Florida includes a section 2-262, which describes the Town's Purchasing Policy; and

WHEREAS, the Town Commission of the Town of Inglis, Florida, has determined that the amendment of the purchasing policy would be in the best interest of the Town and would facilitate the efficient functioning of the operations of the Town; and

NOW, THEREFORE, be it ordained by the Town Commission of the Town of Inglis, Florida:

SECTION 1. DELETION OF SECTION 2-262:

Section 2-262 of the Town's Code of Ordinances is hereby deleted in its entirety;

SECTION 2. ADOPTION OF NEW POLICY:

The Town hereby adopts Exhibit "A" as its purchasing policy to be amended at any time in the future by resolution of the Town Commission.

SECTION 3. EFFECTIVE DATE:

This ordinance shall be effective immediately upon adoption.

Date of First Reading: 06/06/2017; Enacted following a properly noticed public hearing at the regular Commission meeting on 7/3/17.

ATTEST:

Sally McCranie
Sally McCranie
TOWN CLERK

TOWN OF INGLIS

Drinda Merritt
Drinda Merritt
MAYOR

LEGAL REVIEW:

Woodroe Blake Fugate
Woodroe Blake Fugate, Town Attorney

Town of Inglis

PURCHASING POLICY

Section 1 **PURPOSE**

This policy is adopted to assure that commodities and services are obtained efficiently and effectively in free and open competition and through the use of sound procurement practices. All Town staff and other persons with designated responsibility for purchasing are responsible for ensuring compliance with this policy and with all applicable federal and state laws and regulations.

Section 2 **APPLICATION OF POLICY**

This policy shall apply to all contracts or agreements, whether oral or written, for the procurement of any materials, supplies, services, construction and equipment entered into by or on behalf of the Town after the effective date of this policy, ("Purchases").

Section 3 **PURCHASING OFFICER; DEPARTMENT HEADS; BUDGET AND CASH FLOW LIMITATIONS**

The Town Clerk shall serve as the central purchasing officer (the "Purchasing Officer") of the Town of Inglis for all Purchases, and may establish detailed procedures for the approval of and documentation of Purchases. Any of the following (if applicable): the Town Clerk, the Police Chief, the Fire Chief, the head of the Water Department or the Head of the Maintenance Department, or other employee as a Department Head by the Commission (the "Department Heads"), may make Purchases according to the threshold Purchase limits as set forth in Section 4, below. Department Heads receiving approval from the Town Commissioner named as the liaison to each specific department ("Commission Liaisons"), may make Purchases according to the threshold Purchase limits as set forth in Section 4, below. No Purchase may be made unless such Purchase is within the budgeted amount authorized by the Town Commission for the relevant department. The Town Clerk may impose further restrictions upon Purchases if reasonably required by cash flow limitations. In the event of an emergency which is declared in accordance with applicable provisions of Town charter, code or written policy or in accordance with applicable provisions of state or federal law, the Mayor or Town Clerk shall have the authority to waive any of the provisions of this policy, and may make purchases in any amount, for the purpose of responding to the emergency.

Section 4 **PURCHASING AND CONTRACT AWARD PROCEDURES**

Section 4.01 **PURCHASING CATEGORIES; THRESHOLD AMOUNTS**

Except as to Sole Source Purchases (Section 4.06) and Cooperative Purchasing (Section 4.07), all purchases and contract awards are to be made subject to the provisions of the appropriate Section according to the following threshold amounts:

- A. Small Purchases (Section 4.02) \$0 to \$6,000.00
- B. Purchasing Quotes (Section 4.03) \$ 6,000.00 to \$9,000.00
- C. Competitive Sealed Bids/Proposals (Sect 4.04 & 4.05).. \$ 9,000.00 & above

Section 4.02 **SMALL PURCHASES**

Purchases of commodities, equipment and services which cost less than the threshold authorized in Section 4, ("Small Purchases"), do not require solicitation of quotes or bids. Small purchases may be authorized by the Department Head up to the amount of \$3,000.00. Small Purchases over this amount must be approved by the appropriate Commission Liaison.

Section 4.03 **PURCHASING QUOTES**

The purchase of goods and services which cost within the range authorized for purchasing quotes in Section 4 shall require competitive quotations from three or more vendors, if available. Purchasing quotes may be obtained and awarded by the Department Head and the Commission Liaison.

Section 4.04

COMPETITIVE SEALED BIDDING

- A. **Conditions For Use.** All contracts for purchases of a single item, services or aggregate in excess of the established base amount for Competitive Sealed Bids/Proposals in Section 4, where price, not qualifications, is the basis for contract award, shall be awarded by competitive sealed bidding. The Purchasing Officer and Department Head may award bids for Purchases up to the amount of \$10,000.00 subsequent to approval by the Commission Liaison. The Town Commission shall award bids for Purchases over this amount pursuant to the procedures set forth in subsection (F.), below.
- B. **Invitation to Bid.** An invitation to bid shall be issued and shall include specifications, all contractual terms and conditions, and the place, date, and time for opening or submittal. No later than five working days prior to the date for receipt of bids, a vendor shall make a written request to the Town for interpretations or corrections of any ambiguity, inconsistency or error which the vendor may discover. All interpretations or corrections will be issued as addenda. The Town will not be responsible for oral clarifications. No negotiations, decisions or actions shall be initiated or executed by the proposer as a result of any discussions with any Town employee prior to the opening of proposals. Only those communications which are in writing from the Town may be considered as a duly authorized expression on the behalf of the Commission. Also, only communications from firms or individuals which are in writing and signed will be recognized as duly authorized expressions on behalf of proposers.
- (1) **Alternate(s).** Alternate bids will not be considered unless authorized by and defined in the Special Conditions of the bid specifications.
- (2) **Approved Equivalents.** The Town reserves the right to determine acceptance of item(s) as an approved equivalent. Bids which do not comply with stated requirements for equivalents in the bid conditions are subject to rejection. The procedure for acceptance of equivalents shall be included in the general conditions of the bid.
- C. **Public Notice.** Public notice shall be by publication in a newspaper of general circulation at least ten (10) working days prior to bid opening, or through a national bid service utilized by contractors, or professionals in the trade associated with the particular project to be bid. The Town will make every effort to also utilize its local business tax and established vendor list when advertising projects; businesses with the required skills for the project to be bid shall receive direct notification, either through fax or e-mail from Town staff handling the bid process. Notice of the invitation to Bid shall give the date, time, and place set forth for the submittal of proposals and opening of bids.
- D. **Bid Opening.** Bids shall be opened publicly. The Town Commission or the Purchasing Officer, as applicable, shall open the bids in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and other such relevant information as may be deemed appropriate, together with the name of each bidder, and all witnesses shall be recorded. The record and each bid shall be open to public inspection pursuant to s. 119.07.
- E. **Bid Acceptance and Evaluation.** Upon opening, bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Following acceptance, the Purchasing Officer shall evaluate the bids based on the requirements set forth in the Invitation to Bid, which may include, but not be limited to criteria to determine acceptability such as; inspection, testing, quality, recycled or degradable materials content, 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 measured, such as discounts, transportation costs, and total or life cycle costs. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid, in regulations, or in this policy.
- F. **Bid Agenda Item.** For bids that are to be awarded by the Town Commission, the Purchasing Officer, after evaluation, will prepare a recommendation and shall place the item on the agenda of the Town Commission.

G. **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in the bid price or other provisions of bids prejudicial to the interest of the Town or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw his 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 which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the Purchasing Officer.

Should the Town reject all bids, proposals, or replies, to a competitive solicitation, and the Town issues notice it intends to re-bid the solicitation. All of the replies remain exempt from s. 119.07(1) and s. 24(1), Art. 1 of the State Constitution until such time as the agency provides notice of an intent to withdraw the re-bid or a 12 month period after the date of the initial notice of rejection.

H. **Multi-Step Sealed Bidding.** When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

I. **Award.** The Town Commission or the Purchasing Officer, as applicable, shall award the contract with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. The Town reserves the right to waive any informality in bids and to make an award in whole or in part when or both conditions are in the best interest of the Town of Inglis. Any requirement which is waived must be documented and kept in the file.

- (1) **Notice of Intended Award.** The contract shall be awarded by written notice. Every procurement of contractual services shall be evidenced by a written agreement. Notice of the intended award, including rejection of some or all of bids received, may be given by posting the bid tabulations where the bids were opened, by telephone, by first class mail, or by certified United States mail, return receipt requested, whichever is specified in bid solicitation. A vendor may request, in their bid submittal, a copy of the tabulation sheet to be mailed in a vendor provided, stamped self-addressed envelope for their record. The Town may delay providing this information to conform with S. 119.07 guidelines.
- (2) **Notice of Right to Protest.** All notices of decision or intended decisions shall contain the statement: "Failure to file a protest within the time prescribed in Section 4.08 of the Purchasing Policy of the Town of Inglis shall, constitute a waiver of proceedings under that section of this Policy.

J. **Cancellation of Invitations for Bids.** An invitation for bids or other solicitation may be cancelled, or any or all bids may be rejected in whole or in part when it is in the best interests of the Town, as determined by the Purchasing Officer or the Town Commission, as applicable. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items.

K. **Disqualification of Vendors.** For any specific bid, vendors may be disqualified by the Purchasing Officer, for the following reasons:

- (1) Failure to respond to bid invitation three consecutive times within the last eighteen (18) months period.
- (2) Failure to update the information on file including address, project or service, or business description.
- (3) Failure to perform according to contract provisions.
- (4) Conviction in a court of law of any criminal offense in connection with the conduct of business.
- (5) Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
- (6) Clear and convincing evidence that the vendor has attempted to give a Town employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Town's purchasing activity.
- (7) Failure to execute a Public Entity Crimes Statement as required by Florida Statutes Chapter 287.133(3)(a).
- (8) Other reasons deemed appropriate by the Town.

Section 4.05 COMPETITIVE SEALED PROPOSALS

All contracts for purchases of a single item or services or aggregate in excess of the established base amount for Competitive Sealed Bids/Proposals in Section 4, where qualifications, not price, is the basis for contract award, (or a mix of qualifications, price or other criteria) shall be awarded by competitive sealed proposals. All contracts for the procurement of professional architectural, engineering, landscape architectural, and land surveying services will be awarded according to the provisions of Section 4.051. All other contracts required to be awarded by competitive sealed proposals will be awarded according to the provisions of Section 4.052.

Section 4.051 PROFESSIONAL ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL, AND LAND SURVEYING SERVICES

A. **Public Announcement.** It is the policy of the Town to publicly announce all requirements for professional architectural, engineering, landscape architectural, and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the Town may require firms to submit a statement of qualifications, performance data and other related information for the performance of professional services.

- (1) **Scope of Project Requirements.** Prior to submission of the request for proposals for professional services as an agenda item for approval by the Commission, the Purchasing Officer shall submit to the Town written project requirements indicating the nature and scope of the professional services needed, including but not limited to the following:
 - (a) the general purpose of the service or study;
 - (b) the objectives of the study or service;
 - (c) estimated period of time needed for the service or the study;
 - (d) the estimated cost of the service or study;
 - (e) whether the proposed study or service would or would not duplicate any prior or existing study or service;
 - (f) list of current contracts or prior services or studies which are related to the proposed study or service;

- (g) the desired qualifications, listed in order of importance, of the person or firm applicable to the scope and nature of the services requested.
- (2) **Distribution of Project Requirements.** The Purchasing Officer shall distribute the written project requirements as approved by the Town Commission to all persons on the mailing list who have indicated an interest in being considered for the performance of such professional services and to any additional persons as the Purchasing Officer or using agency deems desirable. The written project requirements shall include a statement of the relative importance of each of the requirements. The project requirements shall be accompanied by an Invitation to such persons to submit an indication of interest in performing the required services, and by notification of the date and time when such indications of interest are due. This date shall not be less than 14 calendar days from the date of public notice which the Purchasing Officer shall publish in at least one newspaper of wide general circulation in the region.
- (3) **Modification Prohibition.** After the publicized submission time and date, indications of interest shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed by the Selection Committee (defined in Section 4.051B) prior to making its selection of those best qualified to be formally interviewed.
- (4) **Reuse of Existing Plans.** There shall be no public notice requirements or utilization of the selection process as provided in this section for projects in which the Town is able to reuse existing plans from a prior project. However, public notice of any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse.
- B. **Selection Committee Membership and Evaluation.** Depending on the expected complexity and expense of the professional services to be contracted, the Town may determine whether a three member or five member selection committee will best serve the needs of the Commission.
 - (1) **Three Member Committee Composition.** Membership of a three-member selection committee shall be appointed by the Town Commission.
 - (2) **Five Member Committee Composition.** Membership of a five member selection committee shall be appointed by the Town Commission.
 - (3) **Selection Committee Evaluation.** Only written responses of statements of qualifications, performance data, and other data received in the purchasing office by the publicized submission time and date shall be evaluated. Only those respondents who are determined to be best qualified based upon the evaluation of written responses and selected for formal interview may submit additional data. From among those persons evidencing, by timely submission of written responses, an interest in performing the services the Selection Committee shall:
 - (a) prepare an alphabetical list of those persons determined by the Selection Committee to be qualified, interested and available; and
 - (b) designate no less than three persons on the alphabetical list considered by the selection Committee to be best qualified to perform the work required.
 - (4) **Shortlisting.** The best qualified respondents shall be based upon the Selection Committee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed. The Selection Committee shall determine qualifications, interest and availability by reviewing the written responses that express an interest in performing the services, and by conducting formal interviews of no less than three selected respondents that are determined to be best qualified based upon the evaluation of written responses. The determinations may be based upon, but not limited to, the following considerations:

- (a) competence, including technical educational and training, experience in the kind of project to be undertaken, availability of adequate personnel, equipment and facilities, the extent of repeat business of the persons, and where applicable, the relationship of construction cost estimates by the person to actual cost on previous projects;
 - (b) current work load;
 - (c) financial responsibility;
 - (d) ability to observe and advise whether plans and specifications are being complied with, where applicable;
 - (e) record of professional accomplishments;
 - (f) proximity to the project involved, if applicable;
 - (g) record of performance; and
 - (h) ability to design an approach and work plan to meet the project requirements, where applicable.
- (5) **Interview and Commission Approval.** After conducting the formal interviews, the Selection Committee shall list those respondents interviewed in order of preference based upon the considerations listed in subsection (4) above. The respondents so listed shall be considered to be the most qualified and shall be listed in order of preference starting at the top of the list. The list of best qualified persons shall be forwarded to the Commission for approval prior to beginning contract negotiations. Negotiation sequence shall be based on the order of preference.

C. **Negotiation Staff.** Contract negotiations shall be conducted by the Purchasing Officer unless the Town Commission directs that negotiations be conducted by a Negotiation Committee. The Purchasing Officer or the Negotiation Committee shall negotiate a contract with the firm considered to be the most qualified to provide the services at compensation and upon terms which the Purchasing Officer or the Negotiation Committee determines to be fair and reasonable to the Town. In making this decision, the Purchasing Officer or the Negotiation Committee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. As a part of the negotiation, the Purchasing Officer or the Negotiation Committee shall conduct a cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price. Should the Purchasing Officer or the Negotiation Committee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be formally terminated. The Purchasing Officer or the Negotiation Committee shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Purchasing Officer or the Negotiation Committee shall formally terminate negotiations, and shall then undertake negotiations with the third most qualified firm. Should the Purchasing Officer or the Negotiation Committee be unable to negotiate a satisfactory contract with any of the selected firms, the selection Committee shall select additional firms in order of their competence and qualifications, and the Purchasing Officer or the negotiation Committee shall continue negotiations in accordance with this section until an agreement is reached or until a determination has been made not to contract for services.

Section 4.052 OTHER COMPETITIVE SEALED PROPOSALS (non-287.055 services)

A. **Conditions for Use.** All contracts required by Section 4.05 to be awarded by competitive sealed proposals that are not for the procurement of professional architectural, engineering, landscape architectural, and land surveying services, will be awarded according to the provisions of this section. The Purchasing Officer and Department Head may award contracts for Purchases up to the amount of \$10,000.00 subsequent to

approval by the Commission Liaison. The Town Commission shall award bids under this section over this amount.

- B. **Consultant's Competitive Negotiation Act.** Professional services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined under the Consultant's Competitive Negotiation Act (Section 287.055, Florida Statutes), shall be secured under the provisions of Section 4.051.
- C. **Request for Proposals.** The Purchasing Officer shall prepare a Request for Proposal when the resulting contract is anticipated to exceed the threshold established in Section 4 for Competitive Sealed Bids/Proposals. If award by the Town Commission is required, the Commission shall review the Request for Proposal prior to solicitation.
- D. **Public Notice.** Adequate public notice of the Request for Proposals shall be given in the same manner as provided in subsection 4.04C of this policy for competitive sealed bidding.
- E. **Evaluation Factors.** The Request for Proposals shall state the relative importance of criteria outlined in the scope of services, fee proposal, and other evaluation.
- F. **Proposal Cancellation or Postponement.** The Purchasing Officer may, prior to a proposal opening, elect to cancel or postpone the date and/or time for proposal opening or submission.
- G. **Proposal Opening.** Proposals shall be opened publicly. The Town Commission or the Purchasing Officer, as applicable, shall open the proposals/bids in the presence of one or more witnesses at the time and place designated in the Invitation. All relevant information as may be deemed appropriate, together with the name of each proposer, and all witnesses shall be recorded. The proposal/bid record and each proposal/bid or sealed and competitive bid processes, shall be open to public in accordance with chapter 119.07(1) and s. 24(a) Art. 1 of the State Constitution.
- H. **Revisions and Discussions with Responsible Offerors.** As provided in the Request for Proposals, and under regulations promulgated by the Commission of the Town of Inglis, discussions may be conducted with responsible offerors who submit proposals determined to be qualified of being selected 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 the best and final offers. The Purchasing Officer shall prepare a written summary of the proposals and make a written recommendation of award. As a part of the recommendation, the Purchasing Officer shall conduct a cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price.
- I. **Agenda Item.** For contracts/purchases that are to be awarded by the Town Commission, the Purchasing Officer, after evaluation, will prepare a recommendation and shall place the item on the agenda of the Town Commission, per chapter 119.071.
- J. **Award.** The Purchasing Officer or the Town Commission, as applicable, shall make the award to the lowest responsible offeror whose proposal is determined to be the most advantageous to the Town of Inglis, taking into consideration the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation criteria that is not included in the Request for Proposal. All records shall be retained relating to this process per public inspection pursuant to S. 119.07.

Section 4.06 SOLE SOURCE PURCHASES

- A. **Sole Source Certification.** A contract may be awarded for a supply, service, material, equipment or construction item(s) without competition when the Purchasing Officer certifies in writing, after conducting a good faith review of available sources, that there is only one available source for the required material, supply, service equipment, or construction item(s). Such awards will be made within the authorized

procurement limits. When a purchase exceeds \$5,000.00 , the item will be placed on the agenda for Commission approval and clarification that the vendor has been determined to be a sole source.

- B. **Additional Purchases From Certified Sole Source.** The Purchasing Officer and Department Head, as applicable, may, after initial sole source certification, make additional purchases from a sole source vendor for not less than one year or until such time as contrary evidence is presented regarding sole source eligibility, whichever period is less.

Section 4.07 COOPERATIVE PURCHASING

- A. **State Contracts.** The Purchasing Officer is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the respective state contracts of the Department of General Services. The provisions of sections 4.01, 4.02, 4.03 and 4.04 shall not apply to such purchases. All other requirements of this policy shall apply.
- B. **Other Governmental Units.** The Purchasing Officer shall have the authority to join with other units of government in cooperative purchasing ventures when the best interest of the Town would be served thereby, and the same is in accordance with this policy and with Town and State law.

Section 4.08 BID PROTEST

- A. **Right to Protest.** Any actual prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of contract may protest to the Town Commission. Protestors shall seek resolution of their complaints initially with the Purchasing Officer and secondly with the Town Clerk prior to protesting to the Town Commission.
- B. **Filing a Protest.** Any person who is effected adversely by the decision or intended decision of the Town shall file with the Purchasing Officer a notice of protest in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of intended decision and file a formal written protest within 10 calendar days after the date he/she filed the notice of protest. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this Section. A written protest is filed with the Town when it is delivered to and received in the office of Purchasing Officer.
- (1) The notice of protest shall contain at a minimum: the name of the bidder; the bidder's address and phone number; the name of the bidder's representative to whom notices may be sent; the name and bid number of the solicitation; and a brief factual summary of the basis of the protest.
 - (2) The formal written protest shall: identify the protestant and the solicitation involved; include a plain, clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the protestant deems applicable to such grounds; and specifically request the relief to which the protestant deems himself entitled by application of such authorities to such grounds.
 - (3) The protestant shall mail a copy of the notice of protest and the formal written protest to any person with whom he/she is in dispute.
- C. **Settlement and Resolution.** The Purchasing Officer shall, within 14 days of the formal written protest, attempt to resolve the protest prior to any proceedings arising from the position. Provided, however, if such settlement will have the effect of determining a substantial interest of another party or business, such settlement must be reached in the course of the proceedings provided herein.
- D. **Protest Proceedings.** If the protest cannot be resolved by mutual agreement, the Purchasing Officer shall conduct or designate another to conduct a protest proceeding pursuant to the following procedures.
- (1) **Protest Proceeding Procedures**

- (a) The presiding officer shall give reasonable notice to all substantially affected persons of businesses. Otherwise petitions to intervene will be considered on their merits as received.
 - (b) At or prior to the protest proceeding, the protestant may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the issues raised.
 - (c) In the proceeding, the protestant, or his representative or counsel, may also make an oral presentation of his evidence and arguments. However, neither direct nor cross examination of witness shall be permitted, although the presiding officer may make whatever inquiries he/she deems pertinent to a determination of the protest.
 - (d) The judicial rules of evidence shall not apply and the presiding officer shall base his/her decision on such information given in the course of the proceeding upon which reasonable prudent persons rely in the conduct of their affairs.
 - (e) Within seven (7) working days of the conclusion of the proceeding, the presiding officer shall render a decision which sets forth the terms and conditions of any settlement reached. Such decision of the presiding officer shall be conclusive as to the recommendation to the Town Commission.
 - (f) Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.
- (2) **Intervenor.** The participation of intervenors shall be governed by the terms of the order issued in response to a petition to intervene.
 - (3) **Time Limits.** The time limits in which protests must be filed as provided herein may be altered by specific provisions in the invitation for bids or request for proposals documents.
 - (4) **Entitlement to Costs.** In no case will the protesting bidder or offeror be entitled to any costs incurred with the solicitation, including bid preparation costs and attorney's fees.
- E. **Stay of Procurement During Protests.** In the event of a timely protest under Subsection A of this Section, the Purchasing Officer shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or unless the Town Commission makes a determination that the award of a contract without delay is necessary to protect the substantial interests of the Town.

Section 4.09 CONTRACT CLAIMS

- A. **Authority of the Purchasing Officer to Settle Bid Protests and Contract Claims.** The Purchasing Officer is authorized to settle any protest regarding the solicitation or award of a Town contract, or any claim arising out of the performance of a Town contract, prior to an appeal to the Town Commission or the commencement of an action in a court of competent jurisdiction, but may not settle any such protest or claim for consideration of \$1,000.00 or greater in value without the prior approval of the Town Commission.
- B. **Decision of the Purchasing Officer**
All claims by a contractor against the Town relating to a contract, except bid protests, shall be submitted in writing to the Purchasing Officer for a decision. The contractor may request a conference with the Purchasing Officer on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

- C. **Notice to the Contractor of the Purchasing Officer's Decision.** The decision of the Purchasing Officer shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his appeal rights under Subsection D of this Section.
- D. **Finality of the Purchasing Officer Decision; Contractor's Right to Appeal.** The Purchasing Officer's decision shall be final and conclusive unless, within ten calendar days from the date of receipt of the decision, the contractor files a notice of appeal with the Town Commission.
- E. **Failure to Render Timely Decision.** If the Purchasing Officer does not issue a written decision regarding any contract controversy within fourteen calendar days after receipt of a written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been issued.

Section 4.10 REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

- A. **Prior to Bid Opening or Closing Date for receipt of Proposals.** If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Officer after consultation with the Town Attorney, determines that a solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be cancelled or revised to comply with applicable law.
- B. **Prior to Award.** If after bid opening or the closing date for receipt of proposals, but prior to the award contract, the Purchasing Officer after consultation with the Town Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be cancelled.
- C. **After Award.** If, after award, the Purchasing Officer after consultation with the Town Attorney, determines that a solicitation or award of a contract was in violation of applicable law or ordinance, then:
 - (1) if the person awarded the contract has not acted fraudulently or in bad faith:
 - (a) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the Town; or
 - (b) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract plus a reasonable profit, but excluding attorney's fees, prior to termination; or
 - (2) if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interests of the Town.

Section 4.11 AUCTION PURCHASING

- A. The Purchasing Officer or designee is authorized to purchase goods or services for any dollar amount from authorized auction websites, local auction houses, or national auction firms when it is determined by the Town Commission to be the most cost effective option for acquiring the item(s). Due to the nature of these types of purchases Sections 4.01, 4.02, 4.03 and 4.04 shall not apply to such purchases. All other requirements of this policy shall apply. The Town Clerk, the Police Chief, the Fire Chief, the head of the Water Department or the Head of the Maintenance Department, or other employee as a Department Head by the Commission are pre-approved to make online auction purchases. All persons allowed to make online purchases must be pre-approved by the Clerk. Once purchases are made all documentation regarding the transaction shall be forwarded to Town Hall for final review and processing. Purchases to be made at auction houses shall be approved in advance by the Town Clerk, and the appropriate financial arrangements shall be provided by the Town to the department bidding. All financial documents from the final transactions shall be returned to Town Hall once the purchase is complete. No charter officer or employee shall bid on any goods or services without prior consent of the Town Clerk.

Section 4.12 LOCAL PREFERENCE

- A. **Findings of Fact:** The Town annually spends significant amounts on purchasing personal property, materials, and contractual services and in constructing improvements to real property or to existing structures. The dollars used in making those purchases are derived, in large part, from taxes, fees, and utility revenues derived from local businesses in the corporate Town limits of Inglis, and the Town Commission has determined that funds generated in the community should, to the extent possible, be placed back into the local economy. Therefore, the Town commission has determined that it is in the best interest of the Town to give a preference to local businesses making such purchases whenever the application of such a preference is reasonable in light of the dollar-value of proposals received in relation to such expenditures.
- B. **Definition:** For purposes of this section, the term “Local Business” means a prime contractor or subcontractor duly licensed and authorized to engage in the particular business at issue that maintains a permanent physical place of business in Levy County, Florida, and holds a valid local business tax receipt, (if required under Chapter 205, Fla. Stat.), issued by the Town of Inglis prior to the date of submittal of the bid or quote to the Town.
- C. **Local Business Preference:** When purchasing quotes or competitive bids are solicited, and the lowest price is offered by a vendor located outside the Town of Inglis, and the next lowest price is offered by a Local Business, and is within ten percent of the lowest price offered, then the Local Business shall be given the opportunity to match the lowest price offered. If the Local Business agrees to match the lowest price offered, the Local Business will be awarded the contract if they are otherwise fully qualified and satisfy all related Town requirements.
- D. **Exceptions:** Exceptions to this policy shall include the following:
- (a) Purchases that are funded in whole or in part by assistance from any federal, state or local agency that disallows local preference;
 - (b) Purchases made through a cooperative agreement (i.e., one or more agencies combining requirements in order to benefit from discounts that may be obtained through volume purchasing;
 - (c) Purchases made from another agency’s agreements or contracts (i.e., piggybacking);
 - (d) Purchases subject to F.S. §287.055, the Consultants Competitive Negotiation Act, except as allowed pursuant to the said statute;
 - (e) Procurements subject to formal proposal, (Request for Proposal, Request for Qualifications, or Invitation to Negotiate), versus a straight bid, (Invitation to Bid), where the evaluation criteria includes factors other than price.
 - (f) Any other situation where local preference purchasing is prohibited by law.

Section 5 CONTRACT ADMINISTRATION

Section 5.1 CONTRACT PROVISIONS

- A. **Standard Contract Clauses and Their Modification.** The Town after consultation with the Town Attorney, may establish standard clauses for use in Town contracts. However, the Purchasing Officer may, upon consultation with the Town Attorney, vary any such standard contract clauses for any particular contract.
- B. **Contract Clauses.** All Town contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Officer after consultation with the Town Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects:

- (1) the unilateral right of the Town to order, in writing, changes in the work within the scope of the contract;
- (2) the unilateral right of the Town to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
- (3) variations occurring between estimated quantities or work in contract and actual quantities;
- (4) defective pricing;
- (5) time of performance and liquidated damages;
- (6) specified excuses for delay or nonperformance;
- (7) termination of the contract for default;
- (8) termination of the contract in whole or in part for convenience of the Town;
- (9) suspension of work on a construction project ordered by the Town;
- (10) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract;
 - (a) when the contract is negotiated;
 - (b) when the contractor provides the site or design; or
 - (c) when the parties have otherwise agreed with respect to the risk of differing site conditions;
- (11) value engineering proposals;
- (12) remedies;
- (13) access to records/retention records;
- (14) environmental compliance; and
- (15) prohibition against contempt fees.
- (16) insurance to be provided by contractor covering employee, property damage, liability and other claims, with requirements of certificates of insurance and cancellation clauses.
- (17) bonding requirements as set by the Town Commission.
- (18) causes of and authorization for suspension of contract for improper contractor activity.

Section 5.2 PRICE ADJUSTMENTS

- A. **Methods of Price Adjustment.** Adjustments in price during the term of a contract shall be computed in one or more of the following ways upon approval by the Town:
- (1) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) by unit prices specified in the contract or subsequently agreed upon;

- (3) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon by the Town;
- (4) in such other manner as the contracting parties may mutually agree; or
- (5) in the absence of agreement by the parties, by a unilateral determination by the Town of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the Town, subject to the provisions of this section.

B. **Cost or Pricing Data Required.** A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of this Section.

Section 5.3 CHANGE ORDERS/CONTRACT AMENDMENTS

Change orders and contract amendments, which provide for the alteration of the provisions of a contract may be approved by an appropriate person based upon the dollar value of the change or amendment. The purchasing categories thresholds designated in Sections 4.01 shall govern the appropriate level of approval.

Section 5.4 ASSIGNMENTS OF CONTRACTS

No agreement made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the Town nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of the Town.

Section 5.5 RIGHT TO INSPECT PLANT

The Town may, at its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded, or to be awarded, by the Town. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving the Town.

Section 6 RIGHTS OF TOWN COMMISSION

Nothing in this Policy shall be deemed to abrogate, annul, or limit the right of the Commission, in the best interests of the Town, to reject all bids received in response to a request, to determine in its sole discretion the responsiveness and responsibility of any bidder, to approve and authorize or to enter into any contract it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when desirable for the public good.

Section 7 TOWN PROCUREMENT RECORDS

- A. **Contract File.** All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the Town in a contract file.
- B. **Retention of Procurement Records.** All procurement records shall be retained and disposed of by the Town in accordance with records retention guidelines and schedules established by the State of Florida.

Section 8 SPECIFICATIONS

Section 8.1 MAXIMUM PRACTICABLE COMPETITION

All specifications shall be drafted to promote overall economy and encourage competition in satisfying the Town needs and shall not be unduly restrictive. This policy applies to all specifications including, but not limited to, those prepared for the Town by architects, engineers, designers, and draftsmen.

Section 8.2 USE OF BRAND NAME OR EQUIVALENT SPECIFICATIONS

- A. **Use.** Brand name or equivalent specifications may be used when the Town determines that:
- (1) no other design, performance, or qualified product list is available;
 - (2) times does not permit the preparation of another form of purchase description, not including a brand name specification;
 - (3) the nature of the product or the nature of the Town requirements makes use of a brand name or equivalent specification suitable for the procurement; or
 - (4) use of a brand name or equivalent specification is in the Town's best interest.
- B. **Designation of Several Brand Names.** Brand name or equivalent specifications shall seek to designate three, or as many different brands as are practicable, as "or equivalent" references and shall further state the substantially equivalent products to those designated may be considered for award.
- C. **Required Characteristics.** The brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristics required.
- D. **Nonrestrictive Use of Brand Name or Equivalent Specifications.** Where a brand name or equivalent specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
- E. **Determination of Equivalents.** Any prospective bidder may apply, in writing, for a pre-bid determination of equivalence by the Purchasing Officer. If sufficient information is provided by the prospective bidder, the Purchasing Officer may determine, in writing and prior to the bid opening time, that the proposed product would be equivalent to the brand name used in the solicitation.
- F. **Specifications of Equivalents Required for Bid Submittal**
Vendors proposing equivalent products must include in their bid submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purposes only.

Section 8.3 BRAND NAME SPECIFICATIONS

- A. **Use of Brand Name Specifications.** Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Officer makes a determination that only the identified brand name item or items will satisfy the Town needs.
- B. **Competition.** The Purchasing Officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 4.10, Sole Source Purchases.

Section 9 ETHICS IN PUBLIC CONTRACTING

Section 9.1 CRIMINAL PENALTIES

To the extent that violations of the ethical standards of conduct set forth in this section constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to civil sanctions set forth in this part.

Section 9.2 EMPLOYEE CONFLICT OF INTEREST

- A. **Participation.** It shall be unethical for any Town employee, officer or agent to participate directly or indirectly in a procurement or administration of a contract. A conflict of interest would arise when:
- (1) the Town employee, officer or agent;
 - (2) any member of his immediate family;
 - (3) his or her partner; or
 - (4) an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.
- B. **Blind Trust.** A Town employee, officer or agent or any member of their family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

Section 9.3 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

It shall be unethical for any Town employee who is participating directly or indirectly in the procurement process to become or to be, while such a Town employee, the employee of any person contracting with the Town of Inglis.

Section 9.4 USE OF CONFIDENTIAL INFORMATION

It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

Section 9.5 GRATUITIES AND KICKBACKS

- A. **Gratuities.** It shall be unethical for any person to offer, give, or agree to give any Town employee, officer or agent or for any Town employee, officer or agent to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard rendering of advise, investigation, auditing, or performing in any other advisory capaTown in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal therefor.
- B. **Kickbacks.** It shall be unethical for any payment, gratuity, or offer of employment to be made by or behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- C. **Contract Clause.** The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor.

Section 9.6 SANCTIONS

- A. **Employee Sanctions.** Upon violation of the ethical standards by an employee, officer or agent of the Town, or other appropriate authority may:
- (1) impose one or more appropriate disciplinary actions as defined in the Town Personnel Rules and regulations, up to and including termination of employment;
 - (2) may request investigation and prosecution.

B. **Non-employee Sanctions.** The Commission may impose any one or more of the following sanctions on a non-employee for violation of the ethical standards:

- (1) written warnings;
- (2) termination of contracts; or
- (3) debarment or suspension as provided in Section 15.

Section 9.7 **RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS**

- A. **General Provisions.** The value of anything being transferred or received in breach of the ethical standards of this policy by a Town employee or non-employee may be recovered from both Town employee and non-employee.
- B. **Recovery of Kickbacks by the Town of Inglis.** Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the priced of the subcontract or order and ultimately borne by the Town and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

Section 10 **FEDERAL POLICY NOTICE**

Section 10.1 **PATENTS**

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include the following provisions.

- A. **Notice To Contractor.** The contract shall give notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery or invention arising out of the contract.
- B. **Notice By Contractor.** The contract shall require the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

Section 10.2 **NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS**

- A. **Applicability.** If the contract is being funded in whole or in part by assistance from any federal agency, the contract is subject to one or more federal public policy requirements.
- B. **Notice.** The Purchasing Officer shall include in the contract all appropriate provisions giving the contractor notice of these requirements. Where applicable, the Purchasing Officer shall include in the contract provisions the requirement that the contractor give similar notice to all of its subcontractors.

Section 11 **PAYMENT TO VENDORS**

All payment to vendors shall also be in accordance with the amended "Prompt Payment Act", Chapter 89-297, Florida Statutes.