



**JOSEPH ABRUZZO**  
CLERK OF THE CIRCUIT COURT & COMPTROLLER  
PALM BEACH COUNTY

# ADMINISTRATIVE POLICY 23-04

## Procurement and Contract Policy

**TO:** All Employees  
**FROM:** Joseph Abruzzo, Clerk of the Circuit Court & Comptroller  
**SUBJECT:** Procurement and Contract Policy

---

**ORIGINAL ISSUE DATE: 06/05/2023      REVISION DATES:**

---

**PURPOSE:**

To ensure that all phases of the procurement of goods, supplies and services, including memorializing a contractual obligation, when applicable, are aligned with the guiding principles of the Clerk of the Circuit Court & Comptroller, Palm Beach County (the “Clerk”).

**AUTHORITY**

Fla. Const. Art. II, § 5; Fla. Stat. § 218.33 (3); Fla. Stat. § 11.45(c), (f) & (g), granting to independently elected County Constitutional Officers the authority to implement policies that establish and maintain internal controls in accordance with best practices, and to design policies that will serve the public interest in an economical and efficient manner.

### **Table of Contents**

<b>I. PREAMBLE &amp; POLICY GUIDELINES .....</b>	<b>2</b>
<b>II. DEFINITIONS .....</b>	<b>2</b>
<b>III. PROCUREMENT POLICY .....</b>	<b>5</b>
<b>A. Purchase Order Requirements.....</b>	<b>5</b>
<b>B. Competitive Solicitation Requirements.....</b>	<b>5</b>
<b>C. Special Purchases .....</b>	<b>10</b>
<b>D. Hardware and Software Purchases .....</b>	<b>11</b>
<b>E. Vendor Registration .....</b>	<b>11</b>
<b>F. Vendor Payment.....</b>	<b>11</b>
<b>IV. CONTRACT POLICY .....</b>	<b>13</b>
<b>A. Contract Documentation .....</b>	<b>13</b>
<b>B. Contract Requirements .....</b>	<b>13</b>
<b>C. Exceptions to Requiring a Contract.....</b>	<b>13</b>
<b>D. Contract Development &amp; Responsibility:.....</b>	<b>14</b>

I. PREAMBLE & POLICY GUIDELINES

As a County Constitutional Officer, the Clerk is dedicated to serving the needs of Palm Beach County’s citizens. As it concerns the procurement of goods, supplies or services, the Clerk’s objective is to implement procedures and guidelines to ensure the best use of public funds, and in accordance thereto, improve business opportunities for veterans and all protected classes, whether governed by Federal, State or local law and to ensure that no veteran or person in a class that is protected under Federal, State or local law shall be excluded from participation, denied benefits of, or otherwise be discriminated against, in connection with the award and performance of any contracts with the Clerk.

Because best practices that pertain to Procurement and Contracts operate in tandem, the policies that pertain to both are contained under the policy heading, Procurement and Contract Policy (the “Policy”). However, each area is presented to emphasize its own distinct set of policy guidelines and requirements.

The Clerk is exempt from having to adhere to the Palm Beach County Purchasing Code (the “Code”) and is also not required to utilize the procurement or competitive solicitation requirements that govern State Agencies (*See*, § 287.057, Fla. Stat.). However, the Clerk acknowledges that the requirements set forth in these governing authorities serve as best practice models, and thus, where practical and logistically possible, provisions under this Policy are based on the requirements set forth under either the Code or § 287.057, Fla. Stat. Moreover, while it is the Clerk’s policy to make every reasonable attempt to adhere to the guidelines set forth herein, where a procurement must deviate from these guidelines, the reasons for doing so must be documented and approved by the Clerk, the Clerk’s Authorized Designee or by the Authorized Party.

II. DEFINITIONS

**Terms in this Definitions section are used throughout this document and when found are shown with the first letter of each word capitalized.**

- A. **Authorized Designee**. The individual assigned by the Authorized Party of the department requesting the procurement of goods, supplies or services, and who is responsible for collaborating with the Procurement team and Legal to complete all phases of the transaction, including, without limitation, review and approval of Purchase Orders, Contracts, and invoices.
  
- B. **Authorized Party**. The level of authorization is contingent on the Policy guidelines as it pertains to specific types of purchases as set forth herein. Where multiple levels of management are indicated, each must apply their approval. The Authorized Party is also responsible for assigning the Authorized Designee.
  
- C. **Clerk’s Addendum**. This form is available for use with a vendor’s form agreement. The decision to require a vendor’s acceptance of all or some of

the terms included in the Clerk's Addendum is under the exclusive purview of the department's Authorized Party.

- D. **Best Value.** As it pertains to Competitive Solicitations, the highest overall value based on objective factors that include, but are not limited to, price, quality, design, and workmanship.
- E. **Clerk's Authorized Designee.** For purposes that pertain to any approval mechanism in this Policy, the Clerk's Authorized Designee shall be the Chief Deputy Clerk.
- F. **Clerk's Contract Management System.** Peoplesoft's SmartERP electronic workflow module provides for electronic approvals and a seamless repository that maintains all Clerk Contracts in one secure location. All documentation that pertains to the approval process can be easily accessed, including, but not limited to, master agreements, contracts, amendments, statements of work, change orders, quotes, purchase orders and competitive solicitation documentation.
- G. **Competitive Solicitation.** The process of requesting and receiving two or more sealed proposals or replies submitted by Responsive Vendors in accordance with the terms of a process established in accordance with the guidelines set forth herein.
- H. **Competitive Solicitation Evaluator's Guide.** A guide intended to be used by Evaluators selected to serve on a Competitive Solicitation Evaluation Committee. Its purpose is to provide written guidance to ensure Evaluators understand the Competitive Solicitation process and to furnish instructions to Evaluators about how to prepare and apply a rating scale to criteria developed specifically for each Competitive Solicitation. Each Evaluator must acknowledge receipt and review of the Competitive Solicitation Evaluator's Guide. (*See attached, Exhibit "A-1"*).
- I. **Contract.** A binding written legal agreement between two or more competent parties for the procurement of goods, supplies or services, and which includes the negotiated obligations each party must perform or not perform in exchange for the attendant receipt of benefits that are due to each party.
- J. **Emergency Purchase.** A procurement made in response to a need when the delay resulting from the attempt to comply with the guidelines set forth herein would be detrimental to the Clerk's mission to best serve the citizens of Palm Beach County.
- K. **Evaluator.** Individual that serves on a Competitive Solicitation Evaluation Committee.
- L. **Evaluation Committee.** Group of at least three (3) individuals with appropriate knowledge necessary to competently evaluate vendor responses to a Competitive Solicitation.

- M. **Executed Contract**. A written document containing all material terms central to an enforceable agreement that has been signed by all authorized parties to the agreement, one of which must be the Clerk or the Clerk's Authorized Designee.
- N. **Government Contract**. A contract to which any government agency, including a federal, state, or local government body, is a party to an agreement for the procurement of goods, supplies or services.
- O. **Invitation to Negotiate ("ITN")**. A type of written or electronically posted Competitive Solicitation for the purpose of receiving competitive sealed replies, from which one or more vendors are selected to commence negotiations to determine which goods, supplies or contractual services offer the Best Value.
- P. **Non-Negotiated Agreements ("NNA")**. Agreements for the procurement of any good, supply or service where the vendor's business model does not provide for negotiated agreements and the Clerk or the Clerk's Authorized Designee determines that it is in the best interests of the citizens of Palm Beach County to proceed with the purchase. Examples include, without limitation, digital products, software and/or associated licenses, subscriptions, and social media tools.
- Q. **Piggyback Purchases**. In accordance with the guidelines set forth herein, the procurement of goods, supplies or services that can be purchased off of Contracts where the vendor is a party to a contract with a federal, state, or municipal government or any other governmental agency, political subdivision, or government-related association.
- R. **Purchase Order**. A legal document that is created by the Clerk and sent to a vendor to confirm the Clerk's intention to purchase goods, supplies and/or services.
- S. **Registered Vendor**. Vendors that have successfully completed the Clerk's Accounts Payable registration package.
- T. **Responsive Vendor**. A vendor that has submitted a proposal to the Clerk that conforms in all material respects to a Competitive Solicitation. If a vendor's reply to the Competitive Solicitation document has a major deviation, it is considered material to the evaluation, and thus non-responsive.
- U. **Request for Information ("RFI")**. A type of written or electronically posted Competitive Solicitation, the purpose of which is to solicit information when the Clerk's need as it pertains to the procurement of certain goods, supplies or contractual services has not been firmly established, and thus is used to determine all available vendors who may be a source to procure certain goods, supplies or services. The RFI may but does not always precede the use of an ITN.
- V. **Request for Proposal ("RFP")**. A type of Competitive Solicitation used when the need has been firmly established as it pertains to those goods, supplies or services for which the relevant specifications are equivalent across all vendors,

such that the only factor in the evaluation criteria that determines vendor ranking is the cost of the good, supply or service.

- W. **Sole Source.** There is only one (1) good, supply or service that meets the Clerk’s needs and after a reasonably thorough review of the marketplace, Procurement has determined that the good, supply or service is available through only one (1) source.
- X. **Vendor Qualification Agreement (“VQA”).** This form is used exclusively with technology vendors requiring click through acceptance of terms and conditions prior to accessing the software or digital capability.

**III. PROCUREMENT POLICY**

PROCUREMENT POLICY COMPONENTS	
A. Purchase Order Requirements	D. Vendor Registration
B. Competitive Solicitation Requirements	E. Invoice Approvals
C. Special Purchases	F. Vendor Payment

**A. Purchase Order Requirements**

The procurement of goods, supplies and/or services shall be processed through a Purchase Order issued to a Registered Vendor. Either a quote, Contract or similar documentation is sufficient support for the Purchase Order. If no supporting documentation from the Registered Vendor is available, the Purchase Order shall be supported by an NNA. Purchase order approvals are as follows:

Purchase Dollar Amount	Purchase Order Authorized Party Approval Requirement*
Under \$1,000	Requesting Department Manager
\$1,000 up to \$4,999.99	Department Manager and Director
\$5,000 or greater	Department Manager, Director, and Chief Officer

*\*Hardware and Software purchases require review and approval from IT per Section D.*

**A. Exceptions:** The following are exempt from the Purchase Order requirement, but cannot proceed without a Registered Vendor:

- a. Approved Payment Process Procedure for Special Payables (*See, Clerk's Special Payables Payment Procedure #AP 2009-01, as amended*).
- b. Emergency Purchases [*See, Section III. C. 3) herein*].

**B. Competitive Solicitation Requirements**

Purchase Dollar	

Amount (per item)	Competitive Solicitation Requirements*
\$0 - \$4,999.99	Single quote or relevant pricing information, including, but not limited to, a review of the marketplace and cost / benefit analysis.
\$5,000 - 99,999.99	Maximum of three competitive quotes.
\$100,000 or more	Posting of a Competitive Solicitation.

*\*Hardware and Software purchases require review and approval from IT per Section D.*

- 1) **EXCEPTIONS.** The following are exempt from obtaining a maximum of three competitive quotes or the posting of a Competitive Solicitation;

**At least one of the following exception categories must be documented and authorized by each applicable Authorized Party as the reason why a vendor is exempt from either obtaining a maximum of three competitive quotes or the posting of a Competitive Solicitation.**

- a. Multiple quantities of a single item that is in operational use on a regular basis.
- b. Negotiated purchases after rejection of all Competitive Solicitation responses.
- c. Sole Source items.
- d. Staffing and employee placement services.
- e. Computer hardware and software maintenance agreements that the Authorized Designee determines is not suited to the Competitive Solicitation Requirements as set forth herein.
- f. Office and equipment maintenance and service agreements that the Authorized Designee determines is not suited to the Competitive Solicitation Requirements as set forth herein.
- g. Piggyback Purchases - [See, Section III. C. 1) herein].
- h. Intergovernmental purchases.
- i. Emergency purchases - (See, Section III. C. 3) herein].
- j. Legal services, including, but not limited to attorney, paralegal or mediator services.

**2) Competitive Solicitation Preliminary Steps:**

Once a need for a good, supply or service is identified as requiring a sealed reply under this Policy, Procurement in collaboration with the Authorized Party and, if applicable, the IT Department's Project Management Office, shall make a determination as to whether an RFP or ITN is applicable, and if an ITN is deemed to be appropriate, whether an RFI is necessary.

Competitive Solicitations \$100,000 and greater may be publicly advertised in addition to posting on the Clerk's website.

- a. Once the need for a Competitive Solicitation is determined, the Authorized Designee, in collaboration with Procurement, Legal and any other applicable parties shall:
  - i. Document the rationale for the type of Competitive Solicitation selected;
  - ii. Establish the scope of work and specifications;
  - iii. Select an Evaluation Committee, which may include the Authorized Designee and representatives from other Clerk departments impacted by the applicable goods, supplies or services. An IT representative must be a member of the Evaluation Committee for all Hardware and Software purchases.
  - iv. Select evaluation criteria and a score sheet to be used in evaluating proposals;
  - v. Ensure that an independent email address is activated for Responsive Vendor questions; and
  - vi. Determine if a Competitive Solicitation is required to be publicly advertised in addition to posting on the Clerk's website.

### **3) Content of the Solicitation Document:**

The following clauses or a version thereof should be included in a Competitive Solicitation document that is designed to award a Contract to a selected Responsive Vendor. Therefore, an RFI may not require all of the following provisions.

- a. The Clerk reserves the right to accept, reject in whole or in part all offers, to waive formalities, to negotiate final costs and terms and to accept or negotiate offers that are determined to be most advantageous to the Clerk;
- b. The Clerk, in his sole discretion, may elect to amend any aspect of the Competitive Solicitation document, postpone, or cancel it in its entirety if determined that the need for the procurement no longer exists and will not exist in the immediate future;
- c. No consideration shall be given, or additional evaluation points awarded based on a Responsive Vendor's social, political, or ideological interests.

- d. The Clerk shall negotiate with selected Responsive Vendors in good faith, and provide all Responsive Vendors a "fair and equal" opportunity to earn the Clerk's business;
- e. The Clerk reserves the right to negotiate with the selected Responsive Vendor and to unilaterally determine that negotiations are unsuccessful until the Clerk negotiates successfully with a Responsive Vendor;
- f. No Responsive Vendor shall have ANY rights against the Clerk arising from any proposal or from being selected for negotiation;
- g. The Clerk does NOT INTEND to be bound by the terms of any proposal, nor will any Contract be formed as a result of a proposal being accepted for negotiation;
- h. Responsive Vendors agree to be bound by the Clerk's final decision;
- i. Proposals must state the name and address of the Responsive Vendor on the outside of the envelope, package, or container, and must be received no later than the time and date and at the location specified in the Competitive Solicitation document. No proposal shall be accepted after such time and date or at any location other than specified;
- j. Any proposals received later or at any location other than specified shall, if requested by the Responsive Vendor, be returned unopened to the Responsive Vendor, at the Responsive Vendor's sole expense. The Responsive Vendor shall be notified that the proposal was late.

#### **4) Finalizing Competitive Solicitation Document and Public Notification:**

- a. Prior to posting the **Competitive** Solicitation document on the Clerk's External Website, and/or by additional means of public notification, Procurement and Legal must approve the final version of the **Competitive** Solicitation document.
- b. Include with the posting of the **Competitive** Solicitation document the independent email address for Responsive Vendors to use to pose questions that pertain to the **Competitive** Solicitation document and convey to all potential Responsive Vendors that the answers to all questions will be posted on the Clerk's Website.
- c. No Evaluator or Clerk employee shall correspond with any Responsive Vendor or vendor that has any interest of any kind in the **Competitive** Solicitation document.

#### **5) Evaluation Process:**

- a. The name of each Evaluator, including, but not limited to, the Evaluation Committee's leader and alternate leader shall be documented.



- b. All proposals timely received shall be opened internally by the Procurement Manager or the Procurement Manager's designee, after which, each proposal shall be documented and filed with all information relevant to the Competitive Solicitation.
- c. Prior to the start of the evaluation process, determine if the evaluation scoring process will be by group evaluation or consolidation of individual scores.
- d. The Procurement Manager must collect from each Evaluator the signed Evaluation Committee Profile document, an example of which is attached as Exhibit "A" to the Competitive Solicitation Evaluator's Guide.
- e. Each Evaluator shall participate in the review of all timely received proposals, and score responses in accordance with the criteria set forth in the **Competitive** Solicitation document.
- f. The Procurement Manager or designee will notify non-responsive vendors that because they did not provide responses to the mandatory minimum requirements set forth in the ITN or RFP, their proposals will be excluded from the evaluation process.
- g. A lack of conformity as to an issue(s) of responsiveness or responsibility that is non-substantive in nature may be considered a technicality or irregularity that may be waived by the Evaluation Committee in collaboration with Procurement and Legal.
- h. Each Evaluator shall sign and date score sheet(s) used in grading a proposal. Evaluators **MUST** provide comments on the score sheet, which explain or support scores for each evaluation criterion. Notations made on the score sheet will become public record after contract award.
- i. The Evaluation Committee selects the top scoring proposal.
- j. The Procurement Manager shall maintain all proposals and evaluation documents in accordance with Florida's public records laws, Chapter 119, Florida Statutes.

#### **6) Post Evaluation Notification.**

- a. The Procurement Manager or the Procurement Manager's designee will notify all **Competitive** Solicitation participants of the Responsive Vendor(s), if any, that have been chosen to begin contract negotiations.
- b. Once a Contract has been executed, all documents that pertain to the Competitive Solicitation process, including, but not limited to, the **Competitive** Solicitation Document and the selected Responsive Vendor's proposal shall be stored as an attachment to the Contract between the selected Responsive Vendor and the Clerk

in the Clerk's Contract Management System. (See, Clerk's Contract Policy, as set forth in Article IV herein).

### **C. Special Purchases**

- 1) **Piggyback Purchases.** The use of Piggyback Purchases enables the Clerk to capitalize on economies of scale that is not otherwise available given that the purchasing power of the Clerk is limited to one, singular entity. Moreover, a benefit exists in not having to allocate resources to manage the solicitation of the applicable goods, supplies or services. Therefore, once the Procurement team is made aware that a need for goods, supplies or services exists, it shall check on whether an existing Government Contract exists for the goods, supplies or services, and if so, Procurement shall recommend its use providing that:
  - a. The Clerk does not currently have a Contract that can be utilized for the good, supply or service being requested by the applicable department and its Authorized Designee.
  - b. Procurement and the Authorized Designee have determined that the Piggyback Purchase is advantageous to the Clerk, and that the goods, supplies or services available under the originating Contract meet the Clerk's needs and specifications;
  - c. The vendor and the Clerk enter into an agreement, which may take the form of a formal contract, letter of agreement or similar documentation. In this document, the vendor extends the terms and conditions specified in the originating Contract to the Clerk and the Clerk accepts the terms and conditions specified (See, Clerk's Contract Policy, as set forth in Article IV herein);
  - d. The quantity and specifications of the goods, supplies or services being purchased from the originating Contract do not substantially change the terms and conditions specified in the originating Contract, and unsubstantial increases or decreases in quantity requested or rendered shall not invalidate any Contract;
  - e. The originating Contract shall be stored as an attachment to the Contract between the vendor and the Clerk in the Clerk's Contract Management System, and the Authorized Designee shall be responsible for ensuring the performance of all terms and conditions that apply to the Clerk under the originating Contract.
- 2) **Cooperative Purchases.** The Clerk may participate in, sponsor, conduct, or administer a cooperative purchase with other government entities for the procurement of goods, supplies or services.
- 3) **Emergency Purchases.** Upon Procurement's receipt of the applicable Authorized Designee's authorization that it is necessary to waive the guidelines set forth in this Policy, including, but not limited to, those pertaining to Purchase Orders, Competitive Solicitations, and Contracts, Procurement shall make the Emergency Purchase on the open market, at

the lowest obtainable price, regardless of the amount of the expenditure. As soon as practicable after making the Emergency Purchase, documentation detailing the circumstances justifying the purchase shall be delivered to Procurement for placement in the relevant file.

#### **D. Hardware and Software Purchases**

When procuring hardware (including, but not limited to, computers, printers, monitors, and other IT equipment) or software (including, but not limited to, on-premises, or Cloud [SaaS, PaaS, IaaS, etc.]), the IT department must first review the request to ensure that it complies with IT policies that pertain to security, technical and support capabilities. At a minimum, the software must utilize Single Sign-On (SSO) authentication with Clerk systems. Where a hardware or software procurement must deviate from the foregoing requirements, the reasons for doing so must be reviewed and documented in collaboration with IT and approved by the IT department's Chief or Authorized Designee.

In the event click through acceptance of terms and conditions is required prior to accessing the software or digital capability, the IT department's designee and Procurement's designee shall collaborate to determine whether there is a need for a VQA.

#### **E. Vendor Registration**

Vendors must be approved and registered prior to the procurement of any goods or services. Potential new vendors must complete the Clerk's Accounts Payable group's vendor registration package, and only upon the Accounts Payable group's receipt, review and approval of the completed package will the vendor be added to the Clerk's vendor database. The package includes the following:

- 1) Welcome Letter (with instructions);
- 2) Vendor Registration Form; and
- 3) IRS W-9 Form

All invoices for goods, supplies or services must be transmitted electronically to:

[CCRPAYABLES@mypalmbeachclerk.com](mailto:CCRPAYABLES@mypalmbeachclerk.com)

If electronic transmission is not available, invoices must be mailed directly to:

The Clerk of the Circuit Court & Comptroller, Palm Beach County  
Accounts Payable Group  
Accounting Department  
PO Box 229  
West Palm Beach, FL 33402-0229

#### **F. Vendor Payment**

Except for (i) expressed written authorization from the Authorized Designee; (ii) payments that pertain to the services set forth in the Clerk's Special Payables

Payment Procedure #AP 2009-01, as amended; (iii) cases where pre-payment is part of the customary way of doing business (e.g. deposits, software subscription/licenses; (iv) cases where pre-payment will result in cost savings and is authorized by the Authorized Designee; or (v) payments governed by the Clerk's Travel Administration Policy: 07-01, no Purchase Order or Executed Contract shall provide for the payment of goods, supplies or services not yet received or performed.

### **1) Purchase Order Payments**

Prior to payment of any invoice, the Authorized Designee must ensure that a Receiver is entered and submitted into Peoplesoft. Validation of packing slips, invoices and / or similar documentation signifies that the goods, supplies or services billed for on the invoice have been received or performed as required under the purchase order or contract. Each of these validation documents must be attached to the Receiver and description of the attachment noted in the comments area prior to submitting the Receiver.

If no documentation is available to attach to the Receiver, "No documentation - approved by:" followed by the name of the Authorized Party(ies) must be entered in the comments' area prior to submitting the Receiver.

Invoice discrepancies must be resolved through an Authorized Party prior to submission for payment approval.

Invoice payment approval can be either by direct signoff on the supporting documentation itself or a successful automated matching process in the ERP system. Purchase order payment voucher amounts of \$5,000 or greater require Director and Chief Officer approvals in the PeopleSoft system prior to payment.

### **2) Non-Purchase Order Payments**

For Special Payables vendor payments, see the Clerk's Special Payables Payment Procedure #AP 2009-01, as amended.

For contracts not associated with a Purchase Order, direct signoff by the Authorized Party on the invoice/payment request and/or supporting documentation signifying acceptance is required. Signoff should include the wording "Approval to pay" followed by the signature and printed name of the Authorized Party. Prior to payment, accounts payable staff will validate that amounts billed are consistent with the contract.

Payment shall not be made for goods, supplies or services rendered or received after the expiration date or the completion time of the contract without the Clerk's or the Clerk's Authorized Designee's approval, even though the total amount of the contract has not yet been expended. This does not apply to professional service contracts where services are to be provided on a task-by-task basis or in situations where goods, supplies and/or services are ordered during the contract term.

## IV. CONTRACT POLICY

*All contracts of \$100,000 or greater are subject to Competitive Solicitation requirements pursuant to Section III B. herein.*

### A. Contract Documentation

Vendor Contracts must be prepared using the version of the Clerk's Contract Template that is consistent with the goods, supplies or services to be purchased, or an equivalent Contract form if provided by the vendor (See Section IV. C. herein for exceptions).

### B. Contract Requirements

An Executed Contract is required:

- 1) for the performance of all professional services on behalf of the Clerk;
- 2) when a vendor is selected after the conclusion of the Competitive Solicitation process. [See, Section III. B. herein];
- 3) when goods or supplies received by or services performed on behalf of the Clerk and are to be paid for based upon progress payments, benchmarks and / or milestones;
- 4) for the performance of services or receipt of goods or supplies on a recurring basis (monthly, quarterly, semi-annually and/ or annually);
- 5) for computer hardware and software maintenance agreements that best practices dictate are suited to negotiation, as determined by the Authorized Designee; and
- 6) for office and equipment maintenance and service agreements that best practices dictate are suited to negotiation, as determined by the Authorized Designee.

### C. Exceptions to Requiring a Contract

The following are exceptions to requiring a Contract for the procurement of equipment and supplies, but each is NOT exempt from Purchase Order Requirements as set forth in Section III. A. herein.

- 1) When purchased from a Registered Vendor and not based upon progress, benchmark, and/or milestone payments;
- 2) When purchased from a Registered Vendor that is governed by a current executed master agreement or current general pricing agreement;
- 3) When purchases are made from a governmental agency.

#### **D. Contract Development & Responsibility:**

- 1) **Contract Responsibility.** The Authorized Party is responsible for the contract and may assign primary responsibility for the contract process to the Authorized Designee. The Authorized Party shall be responsible for reviewing the Clerk's Employee Handbook Conflicts of Interest and Florida Statute 112.313 (Code of Ethics for Public Officers and Employees). If a conflict as it pertains to a potential vendor is discovered, the Authorized Party shall be responsible for advising the Chief Deputy Clerk of the potential conflict. The Chief Deputy Clerk shall determine whether a conflict exists and if so, the appropriate steps that need to be taken to address the conflict, up to and including a discontinuation of Contract negotiations.
- 2) Vendor must submit a completed W-9 to identify the type of entity and its exact legal name. (i.e. sole Proprietorship, Corporation ("C" or "S", Professional Associations, Limited Liability Companies) Partnership (General, Limited, registered Limited Liability Partnership).

#### **3) Best Practice Development Guidelines.**

- a. If applicable to the purchase, use the version of the Clerk's Contract Template applicable to the goods, supplies or services that is being purchased.
- b. If using the vendor's form contract, request that vendor include the Clerk's Addendum as an exhibit, ensuring that Clerk's standard contractual provisions will be incorporated into the Executed Contract.
- c. Except for cases in which there is substantial capital investment, contracts shall not extend beyond a five-year term including the initial term and renewal(s). Renewals shall be at the option of the Clerk at the established price, terms and conditions as the original contract or at negotiated incremental increases. Contract Renewals or an extension of the current contract term requires an amendment to the original contract, signed by all parties to the original contract.
- d. The Authorized Designee shall have primary responsibility for developing the Contract's technical content, with input from all concerned parties, including, but not limited to, the IT Department's Project Management Office and Cyber Security team, Procurement and Legal Services, as may be necessary.
- e. The Authorized Designee shall be responsible for obtaining required approvals, completion of any required forms, and presentation of all applicable documents to the Chief Deputy Clerk for final review and processing of the Contract prior to the Clerk's signature.

- f. The Authorized Designee shall ensure that no work is performed prior to execution of any agreement, including, but not limited to change orders and amendments to the Executed Contract, and shall:
  - i. Work with Procurement and Legal to ensure that the obligations of the parties are memorialized in a document, including ensuring that the scope of work, if applicable, is set forth, detailing the “who,” “what,” “when,” and “how” of the vendor’s responsibilities.
- g. Reimbursable expenses are permitted only if no other construction of a contractual provision is adequate to compensate the vendor’s performance. If applicable, the following conditions will apply:
  - i. Reimbursement rates for travel expenses must be consistent with the Clerk’s Travel Policy.
  - ii. Reimbursement will not be provided for items or expenses normally connected with the course of doing business such as office supplies, advertisement for hiring personnel, lease or purchase of office furniture, equipment or space, local telephone service, entertainment expenses (including business lunches), computer time on the vendor’s own equipment and normal reproduction (copying) charges.
  - iii. If the negotiated agreement allows for reimbursable expenses, then the terms of the contract must require that supporting documentation is provided when submitting expenses for reimbursement. Supporting documentation must include original or copies of receipts or invoices and for each specific expense being submitted for reimbursement, coinciding evidence of payment such as a cancelled check or equivalent proof of payment.
  - iv. Special charges may be reimbursed if the contract terms identify the exact nature, quantity and unit cost maximum for each type of special charge required by the contract and subject to the reimbursement.
  - v. Maximum of total reimbursements allowed under the contract.
- h. Advance Payment – No Contract shall provide for any payment prior to the receipt and acceptance of goods, supplies or services represented by that payment, except for rent or lease payments, deposits, advertising, training courses, continuing education, memberships and subscriptions, copier or printer maintenance payments or as otherwise authorized by the Clerk or the Clerk’s Authorized Designee, under those circumstances where a prepayment will result in a cost savings.
- i. Fee for Service Contracts – Time & Material Negotiated Contracts Should include:

1. Provisions that describe and substantiate the value of the goods, supplies and/or services to be provided in exchange for the time expended and/or units produced based on predetermined unit rates. Such provisions include, but are not limited to:
  - schedule of labor hours (name and/or title, raw hourly rate, load factors, and corresponding hourly costs if applicable);
  - materials, billable line-item;
  - tasks and deliverables;
  - not to exceed or maximum amount;
  - allowable reimbursable expenses in accordance with this Policy; and
- j. Fee for Service Contracts – Fixed Price Contracts apply when a lump sum payment is not attached to quantification of the services provided. These contracts should include:
  1. Provisions that describe and substantiate the value of the goods, supplies and/or services to be performed in exchange for the total fixed price. Such provisions include, but are not limited to:
    - Schedule of labor hours (name and/or title, raw hourly rate, load factors, and corresponding hourly costs, if applicable);
    - materials;
    - billable line-item tasks;
    - deliverables; and
    - milestones.
  2. If applicable to the services provided, the Contract should also include: (i) acceptance criteria for each milestone / deliverable upon completion; (ii) format of acceptance such as the need for a specific form or documentation; and (iii) appropriate staff signoff required for acceptance.
  3. If applicable to the services provided, the time of performance must not be open ended and a start and completion date must be included in the Contract. Consideration should be given to whether the start date chosen is practical as it pertains to departmental priorities.



4. If applicable to the services provided, the Contract should include a provision that requires the vendor's reasonable cooperation in the event the Clerk transitions to a new vendor that provides a similar service. Cooperation should be defined in the Contract and includes, but is not limited to:
  - Vendor's providing non-proprietary documentation related to testing a new vendor's system functionality, and if at any time subsequent to termination, the vendor's technology is interfering with the Clerk's ability to transition to a new vendor, vendor shall cooperate to take all necessary steps, including, but not limited to, redirecting links on its website pursuant to the Clerk's direction.
- k. Payment Authorization: Prior to authorizing payment, the Authorized Designee shall ensure that detailed invoices make reference to specific milestones or deliverables, including, but not limited to: (i) materials delivered; (ii) project labor hours; (iii) completed phases; (iv) percentage of project completion; and/or (v) tasks completed.
- l. Insurance: Insurance requirements, if necessary, must be adequate to protect the Clerk. It shall be the Authorized Designee's responsibility in collaboration with Procurement and Legal to coordinate specific insurance requirements, and if deemed necessary, insurance certificates should be submitted prior to the execution of the Contract, and moreover, the Authorized Designee must ensure that for the entire term of the Contract, including automatic renewals, the vendor's current insurance certificate is on file.
- m. Non-Appropriations: Any contract extending beyond the Clerk's fiscal year in which it is executed should contain an annual appropriations clause wherein the contractor acknowledges the Clerk is a public office subject to public funding issues and that the contract may be terminated should funds not be appropriated or budgeted for that purpose in any subsequent fiscal year.
- n. Audit: Contracts shall include a clause indicating that the authority and right is granted to the Clerk's office to review and audit any contractor's records to determine the reasonableness of any charges billed to the Clerk.

## **E. Contract Administration & Management**

- 1) Procurement is responsible for:
  - a. Centralized monitoring and procedural review, including, but not limited to, tracking the progress of Contracts in development,

termination dates, options to renew, amendments and change orders;

- b. Contract review and vendor performance assessments in collaboration with the Authorized Designee will be performed prior to the execution of a contract renewal or new contract with an existing vendor to determine if additional amendments are necessary or viable alternatives are available. Department/operation specific policies specific to HR benefits, collections and legal services agreements that are not part of this policy are to be included in the assessment and the evaluation. Copies of the evaluations must be signed by the Authorized Designee and Procurement Manager and stored in the Clerk's Contract Management System.
  - c. Ensuring that no Contract is presented to the Clerk for signature without prior review by both Procurement and Legal.
- 2) The Authorized Party shall assign primary responsibility for the contract process to an Authorized Designee who, for the duration of the Contract, shall be responsible for tracking percentage of completion and deliverables on the Contract relative to total billings to date. The Authorized Designee is also responsible for periodic review of the Contract to ensure compliance with all terms and conditions outlined therein.
- 3) Change orders, amendments or any document modifying an existing agreement must include the following:
- a. Specific identifying information about the original agreement and all subsequent amendments or change orders;
  - b. Inception to date expenditures; and
  - c. The total dollar amount associated with the change order, amendment or any document that modifies an existing agreement.

*Shannon Ramsey-Chessman*  
REVIEWED AND APPROVED

May 18, 2023  
DATE