

RESOLUTION NO. 2019-07

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF HILLIARD, FLORIDA, A MUNICIPAL CORPORATION ADOPTING A POLICY RELATING TO TOWN PURCHASES INCLUDING A MINORITY BUSINESS ENTERPRISE POLICY FOR USE IN ADMINISTERING COMMUNITY DEVELOPMENT BLOCK GRANTS; PROVIDING DEFINITIONS; DEFINING AN ACTION PLAN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Hilliard desires to establish a policy regarding purchases under the Town's Community Development Block Grants (CDBG), women owned and minority businesses, and

WHEREAS, the Town Council of the Town of Hilliard recognize the need to adopt a plan for purchases under the Community Development Block Grant;

NOW THEREFORE, BE IT RESOLVED BY TOWN COUNCIL OF THE TOWN OF HILLIARD, FLORIDA, AS FOLLOWS:

**TOWN OF HILLIARD
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
PURCHASING POLICY
INCLUDING THE
MINORITY BUSINESS ENTERPRISE POLICY**

Section 1 PURPOSE

This policy is adopted to assure that commodities and services for the Community Development Block Grant Programs are obtained efficiently and effectively in free and open competition and through the use of sound procurement practices. All Town staff and other persons (subgrantees or contractors) with designated responsibility for the administration of CDBG award contracts are responsible for ensuring compliance with all applicable federal and state laws and regulations. These include but are not limited to: OMB Circular A-102, attachment O; 2 CFR Part 200; s. 255.0525 and 287.055 Florida Statutes, Chapter 73C-23 Florida Administrative Code.

Section 2 APPLICATION OF POLICY

This policy shall apply to contracts or agreements for the procurement of all materials, supplies, services, construction and equipment for any Community Development Block Grant Program solicited or entered into after the effective date of this policy.

Section 3 PURCHASING DIRECTOR

The Town Clerk shall serve as the central purchasing officer (the "Purchasing Officer") of

bids or proposals which can be considered. However, if three responsible and responsive bids or proposals are not received, the procurement will be invalid.

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 receipts 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 Council. Also, only communications from firms or individuals which are in writing and signed will be recognized by the Council 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.
3. Public Notice. Public Notice shall be by publication in a newspaper of general circulation at least twelve (12) working days prior to bid opening or in accordance with Section 4.04-2 above as appropriate. Notice of the Invitation to Bid shall give date, time, and place set forth for the submittal of proposals and opening bids.
4. Bid Opening. Bids shall be opened publicly. The Purchasing Officer or his/her designee shall open 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 by the Purchasing Officer together with the name of each bidder, and all witnesses shall be recorded. The record (Bid Report) and each bid shall be open to public inspection.
5. Bid Acceptance and Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated 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 material 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.

6. Bid Agenda Item. After evaluation, the Purchasing Officer will prepare a recommendation and shall place the item on the agenda of the Town Council.
7. 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 bids 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 to Bid 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 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.
8. 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.
9. Award. The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid.
 - (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 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, self-addressed envelope for their records.

- (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 CDBG Purchasing Policy of the Town of Hilliard shall constitute a waiver of Proceedings under that section of this policy".
10. Cancellation of Invitations for Bids. An Invitation for bids or other solicitation may be canceled, 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 Council provided such action does not violate CDBG program requirements. 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 re-solicitation or any future procurement of similar items.
 11. Disqualification of Vendors. For any specific bid, vendors may be disqualified by the Finance Director or Town Clerk for the following reasons:
 - (1) Failure to perform according to bidding provisions.
 - (2) Conviction in a court of law of any criminal offense in connection with the conduct of business.
 - (3) 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.
 - (4) 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.
 - (5) Failure to execute a Public Entity Crimes Statement as required by Florida Statutes Chapter 287.133 (3) (a).
 - (6) Failure to be a responsive bidder according to the bidding procedures and provisions will result in disqualification of a bid.

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, 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

1. 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 Council, 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 services or study;
 - (b) the objectives of the study or services;
 - (c) estimated period of time needed for the services 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 services;
 - (f) list of current contracts or prior services or studies which are related to the proposed study or service;
 - (g) the described 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 Council 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 twelve calendar days from the date of public notice when the Purchasing Officer shall publish in at least one daily newspaper of general circulation in the County where the project is located and in a nearby federal Office of Management and Budget (OMB) designated metropolitan

statistical area (MSA). Alternatively, the Town may substitute the above notice with any solicitation procedure which generates at least three responsible and responsive bids or proposals which can be considered. However, if three responsible and responsive bids or proposals are not received, the procurement will be invalid.

- (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.

2. 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 Council.

- (1) Three Member Committee Composition. Membership of a three-member selection committee shall be appointed by the Town Council.
- (2) Five Member Committee Composition. Membership of a five-member selection committee shall be appointed by the Town Council.
- (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 determination 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 costs estimates by the person to actual cost on previous projects;
- (b) current work load;
- (c) financial responsibilities;
- (d) ability to observe and advise whether plans and specifications are being compiled 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 Council 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 Council for approval prior to beginning contract negotiations. Negotiation sequence shall be based on the order of preference.

3. Negotiation Staff. Contract negotiations shall be conducted by the Purchasing Officer unless the Council President directs that negotiations be conducted by a Negotiation Committee.

Negotiation. The Purchasing Officer or the Negotiation Committee shall negotiate a

5. Evaluation Factors. The Request for Proposals shall state the relative importance of criteria outlined in the scope of services, fee proposal, and other evaluation.
6. 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.
7. Revisions and Discussions with Responsible Offerors. As provided in the Request for Proposals, and under regulations promulgated by the Town Council of the Town of Hilliard, 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 submission and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The Purchasing Officer shall prepare a written summary of the proposals and make written recommendation of award to the Town Council. 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.

Award. Award shall be made by the Town Council to the lowest responsive and responsible offer or whose proposal is determined in writing to be the most advantageous to the Town of Hilliard, 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.

Section 4.06 SOLE SOURCE PURCHASES

Sole Source Certification. The procurement for all professional services and any contract resulting from a non-competitive procurement process must meet the requirements of 2 CFR Part 200 and Section 287.055 of the Florida Statutes. The Town's Purchasing Officer must conduct a cost or price analysis of all proposed prices on sole source purchases, analysis shall include a review of profit as a separate element. Sole source purchases must be approved by DEO in writing.

Section 4.07 COOPERATIVE PURCHASING

1. 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, subject otherwise to the requirements of this policy.
2. Other Governmental Units. The Purchasing Officer shall have the authority to join 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 the Town and State Law.

Section 4.08 BID PROTEST

1. 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 Council. Protestors shall seek resolution of their complaints initially with the Purchasing Officer and secondly with the Town Clerk prior to protesting to the Town Council.

2. Filing a Protest. Any persons who is affected 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 bid tabulation or after receipt of the notice of intended decision; and file a formal written protest within 10 calendar days after 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 the Purchasing Officer.
 - (1) The notice of protest shall contain at a minimum: the name of the bidder; the bidders 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.

3. 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.

4. 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 or 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, or affidavits, and arguments which he/she deems relevant to the issues raised.
 - (c) In the proceeding, the protestant, or his/her representative or counsel, may also make an oral presentation of his evidence and arguments. However, neither direct nor cross examination of witnesses 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 Council.
 - (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 invitation for bids or request for proposal.
- (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.
5. 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 Council makes a determination that the award of a contract without delay is necessary to protect the substantial interest of the Town.

Section 4.09 CONTRACT CLAIMS

1. 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 Council 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 prior approval of the Town Council.

2. 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.
3. 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.
4. Finality of the Purchasing Officer Decision; Contractor's Right to Appeal. The Purchasing Officer's decision shall be final and conclusive unless, within 10 calendar days from the date of receipt of the decision, the contractor files a notice of appeal with the Town Council.
5. 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 SOLICITATION OR AWARDS IN VIOLATION OF LAW

1. 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 solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.
2. 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 canceled.

3. After Award. If, after award, the Purchasing Officer after consultation with the Town Attorney, determine 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 terminated and the person awarded the contract shall be compensated for 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 interest of the Town.

Section 5 CONTRACT ADMINISTRATION

Section 5.1 CONTRACT PROVISION

1. Standard Contract Clauses and Their Modification. The Town after consultation with the Town Attorney, may establish standard contract 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.
2. 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 the 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 contingency 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 Council;
 - (18) causes of and authorization for suspension of contract for improper contractor activity.

Section 5.2 PRICE ADJUSTMENTS

1. Method 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 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 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.

2. Costs 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 Section 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, as its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performances 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 TOWN PROCUREMENT RECORDS

1. 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.

2. 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 and Federal Guidelines. For CDBG related activities that retention period is six years.

Section 7 SPECIFICATIONS

Section 7.1 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. The policy applies to all specifications including, but not limited to, those prepared for the Town by architects, engineers, designers, and draftsmen.

Section 7.2 USE OF BRAND NAME OR EQUIVALENT SPECIFICATIONS

1. 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) time 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 equivalent specifications suitable for the procurement; or
 - (4) use of brand name or equivalent specification is in the Town's best interest.

2. Designation of Several Brand Names. Brand names 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.
3. Required Characteristics. The brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristics required.
4. 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.
5. Determination of Equivalents. Any prospective bidder may apply, in writing, for a pre-bid determination of equivalence by the Purchasing Director. If sufficient information is provided by the prospective bidder, the Purchasing Director 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.
6. 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 7.3 BRAND NAME SPECIFICATIONS

1. Use of Brand Name Specifications. Since the use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Director makes a determination that only the identified brand name item will satisfy the Town needs.
2. Competition. The Purchasing Director 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 8 ETHICS IN PUBLIC CONTRACTING

Section 8.1 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 in addition to civil sanctions set forth in this part.

Section 8.2 EMPLOYEE CONFLICT OF INTEREST

1. 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 officer's employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, or parties to sub-agreements.

Section 8.3 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 Hilliard.

Section 8.4 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 other persons.

Section 8.5 GRATUITIES AND KICKBACKS

1. Gratuities. It shall be unethical for any person to offer, give, or agree to give 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 the 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 capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal theretofore.
2. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or behalf 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.
3. Contract Clause. The prohibition against gratuities and kickbacks prescribed in this section shall conspicuously set forth in every contract and solicitation therefore.

Section 8.6 SANCTIONS

1. 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; and;
 - (2) may request investigations and prosecution

2. Non-employee Sanctions. The Council 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 11-8.

Section 8.7 RECOVERY OF VALUE TRANSFERRED OR RECEIVED
IN BREACH OF ETHICAL STANDARDS

1. 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 the Town employee and non-employee.

2. Recovery of Kickbacks by the Town of Hilliard. Upon a showing that a subcontractor made a kickback to 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 price 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 a kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

Section 9 FEDERAL POLICY NOTICE

Section 9.1 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:

1. 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 inventions arising out of the contract.

2. 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 9.2 NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS

1. 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 such as:
 - (1) equal employment opportunity;
 - (2) Copeland "anti-kickback" Act;
 - (3) Davis Bacon Act;
 - (4) Contract Work Hours and Safety Act;
 - (5) Americans with Disabilities Act; and
 - (6) Other requirements set forth in any contract.
2. Notice. The Purchasing Director shall include in the contract all appropriate provisions giving the contractor notice of these requirements. Where applicable, the Purchasing Director shall include in the contract provisions the requirement that the contractor give similar notice to all of its subcontractors.

Section 10 PAYMENT TO VENDORS

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

Section 11 MINORITY BUSINESS ENTERPRISE PARTICIPATION PROGRAM

1. Purpose and Scope. The purpose of the Minority Business Enterprise Program is to enhance the participation of qualified minority and women-owned businesses in providing goods and services and construction contracts required by the Town Council. This program describes procedures to accomplish this purpose and to monitor and evaluate progress. All Department and Divisions under the jurisdiction of the Town Council are responsible for implementing this program.
2. Policy Statement.
 - (1) It is the policy goal of the Town that two percent (2%) of the Council approved procurement as contained with both operating and capital improvement budgets (exclusive of in-house services and construction) shall be identified and let through the competitive bid process to minority and women businesses and persons. The program is based on an in-depth evaluation of all actual as well as projected procurement (Capital Improvement Projects, equipment, commodities and services) and on the market place. Procurement identified to establish a base for this program are not limited to those items only. This evaluation is the main factor in building a realistic program with attainable targets.

- (2) All departments and divisions under the jurisdiction of the Town Council are responsible for implementing this program and for making every reasonable effort to utilize MBEs and WBE's when opportunities are available. The Purchasing Officer will take the lead role in this process by taking active steps to encourage minority or women owned businesses.
 - (3) Regarding the implementation of this policy, it is the Council's intent to foster economic development in the Town's area by establishing its MBE goals based on availability of minority and women-owned businesses located within the Town. This is no way intended to limit or restrict competition. Rather, availability of area companies will be used to guide MBE goals. Such geographical preferences may be adjusted, amended or repealed by the Town Council, with or without a public hearing, as deemed necessary.
3. Definition. Minority Business Enterprise (MBE) as used herein, means a business that is owned and controlled at least 51% by one or more minority persons (MBE) or by one or more women (WBE) and whose management and daily operations are controlled by one or more such persons.
4. Administrative Responsibilities. The Purchasing Officer is responsible for the coordination of the Minority Business Enterprise Program and registration.
 - (1) Capital Improvement Projects
 - (a) REVIEW
The Purchasing Officer and an appropriate department representative shall review each proposed project or bid to determine potential for utilization of MBE/WBEs and report their finds to the Town Council. This review is based on known availability of capable MBE/WBEs in the area in relation to the scope of the bid package and considers how a project might be broken down into sub-bids.
 - (b) PRE-BID ACTIVITY
 - (1) Language regarding the Minority Business Enterprise Program will be inserted into bid specifications to assure that prospective bidders are aware of a requirement to make good faith efforts to utilize MBE/WBEs.
 - (2) Registered MBE/WBEs, the Minority Contractors Association and other organizations for minority and women owned businesses will be notified in writing regarding pre-bid conferences where information on project scope and specifications will be presented, along with other types of technical

assistance.

- (3) Upon request available plans and specification will be provided to MBE/WBE associations along with any special instructions on how to pursue bids.
- (4) Majority (prime) contractors on a bid list will be sent a letter outlining the Minority Business Enterprise Program procedures, the supportive documentation required for submittal with their bid, and a list of MBE/WBE contractors on the bid list.
- (5) Prior to award the Prime Contractor must provide documentation on attempts to solicit participation from MBE/WBE firms.
- (6) The Prime Contractor attempts to utilize MBE/WBE firms during the project must be documented as part of the Prime's contract award responsibilities under this program. Documentation to include but not limited to requests for bids, bids received and justification for not utilizing MBE/WBE firms when bid amounts received are comparable.

Failure to keep these commitments will be deemed noncompliance with the contract and may result in a breach of contract.

(2) Contractor Responsibilities

- (a) Contractors must indicate all MBE/WBEs, contacted for quotes regarding a particular scope of work and submit a completed "Intent to Perform" sheet containing information and documentation obtained from each MBE/WBEs.
- (b) A contractor who determines that a MBE/WBEs, names in the bid submittal, is unavailable or cannot perform, will request approval from the Purchasing Officer to name an acceptable alternate. Such requests will be approved when adequate documentation of cause for the change is presented by the contractor.
- (c) A contractor's MBE/WBE plan will utilize MBE/WBEs to perform commercially useful functions in the work bid. A MBE/WBE is performing a commercially useful function when it is responsible for the management and performance of a distinct element of the total work.
- (d) Contractors are required to make good faith efforts to obtain MBE/WBE participation when so stipulated by bid specifications and/or contracts. If these efforts are unsuccessful, the contractor will

submit a non-availability or refusal to participate and will request waiver of MBE/WBE participation.

- (e) The contractor who is the successful bidder will attend pre-construction conferences with appropriate Town representatives to review the project scope and the MBE/WBE utilization plan.
- (f) The contractor who is the successful bidder must request a change order for any modification to the MBE/WBE plan. Change orders require Council approval and are contingent on contractor documentation of MBE/WBE involvement in the change requested and documentation of cause for these changes.

5. Joint Venture Responsibilities

Definition of Joint Venture - A business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task. All parties agree to share in the profit and losses of the enterprise.

- (1) All joint ventures between minority and non-minority contractors must meet the "joint venture" definition included in the policy.
- (2) The use by MBE/WBEs or prime contractors of "minority fronts" or other fraudulent practices which subvert the true meaning and spirit of the Minority Business Enterprise Program, will not be tolerated and may result in termination of participation.
- (3) A joint venture consisting of minority and non-minority business enterprise will be credited with MBE/WBE participation on the basis of the percentages of the dollar amount of the work to be performed by the MBE/WBEs.
- (4) Contracts subject to this policy shall contain provisions stating that liquidated damages may be assessed against the general contractor and/or the MBE/WBE specifications in the contract(s). Such liquidated damage provisions shall be in a form approved by the Council.

6. Fulfilling MBE/WBE Participation Requirements

For the purpose of this policy, a general contractor may utilize the services of a MBE/WBE subcontractor, manufacturer, and/or supplier in estimating and satisfying the scope of work, provided that written contract/agreement is executed between the general contractor and the subcontractor, manufacturer, and/or the supplier.

7. Payment

- (1) Payment will be expedited by the Town Council within thirty (30) days upon completion and acceptance of the project. Special consideration may be given to hardship cases upon notification by MBEs/WBEs.
- (2) The Town will provide work progress payments to all business at the completion and subsequent acceptance by Council representatives within various stages of a particular project.

8. Bid List.

A bid list for the purpose of bid solicitations shall be maintained by the Town. The list shall consist of firms that apply.

- (1) The Council may remove firms from the bid list for the following reasons:
 - (a) failure to perform according to contract provisions;
 - (b) conviction in a court of law of any criminal offense in connection with the conduct of business.
 - (c) 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.
 - (d) clear and convincing evidence that a vendor has attempted to give a Council employee, officer or agent a gratuity of any kind for the purpose of influencing recommendation or decision in connection with any part of the Town Council purchasing activity;
 - (e) violation of circumvention of the Minority Business Enterprise Program; or
 - (f) other reasons deemed appropriate by the Town Council
- (2) This policy is consistent with the Town's Purchasing Policy. Wherever conflicts may exist, the provision in this Purchasing Policy will prevail.

9. Reporting.

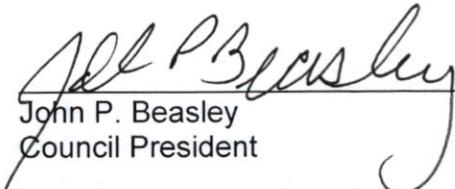
The Purchasing Officer or appropriate person will report, at least annually, to the Council on the Status of the Minority Business Enterprise Program. Records will be maintained reflecting participation of local minority and women owned businesses and shall be reported.

10. Severability Clause.

Each separate provision of this program is deemed independent of all other provisions herein so that if any provision or provisions be declared invalid, all other provisions hereof shall remain valid and full force and effect.

DULY PASSED AND ADOPTED by the Town Council of the Town of Hilliard, Florida at a regular meeting on this 20th day of June, 2019.

TOWN OF HILLIARD



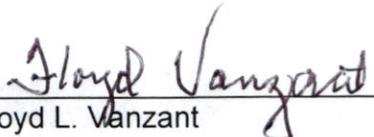
John P. Beasley
Council President

ATTEST:



Lisa Purvis
Town Clerk

APPROVED:



Floyd L. Vanzant
Mayor