

ORDINANCE NO. 2022-09

AN ORDINANCE OF THE TOWN OF REDINGTON SHORES, FLORIDA, AMENDING CHAPTER 36 OF THE TOWN CODE CONCERNING PROCUREMENT; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND FOR AN EFFECTIVE DATE.

WHEREAS, when the Town of Redington Shores needs to obtain commodities or services, the Town desires to engage in procurement practices which are fair to the vendor community and which ensure the Town receives competitive responses to solicitations so as to ensure the Town's fee and taxpayers get the best benefit from the expenditure of such funds; and

WHEREAS, the Town Commission recognizes that certain procurement events should not be made solely on price where the desire to acquire vendors with unique skills and qualifications, or where intellectual property rights require award to a sole source; and

WHEREAS, otherwise, the Town Commission believes that competitive solicitations should be the norm in the acquisition of commodities and services for the Town; and

WHEREAS, the Town's procurement policies should be able to be suspended or waived in unique circumstances such as emergencies or extreme weather conditions; and

WHEREAS, the Town regulates its procurement activities in Chapter 36 of the Town Code; and

WHEREAS, Chapter 36 has not been amended since 2013 and the Town Commission finds that it fails to adequately address current laws and best practices associated with public procurement; and

WHEREAS, the Board of Commissioners finds that it is in the best interest of the Town, its residents, and property owners, to approve the provisions set forth in this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Shores, Florida, that:

Section 1. Chapter 36 of the Redington Shores Town Code is hereby amended as follows:

Chapter 36 – PURCHASING

ARTICLE I.—BIDDING

Sec. 36-1. Purpose.

The purpose of this chapter is to provide for the fair and equitable treatment of all persons involved in public purchasing by the town, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

Sec. 36-2. Application.

- A. This chapter applies to solicitations and contracts entered into for the purchase of goods, services, and construction. Any current or subsequent amendment shall only apply to solicitations and contracts issued and entered into by the town after the effective date of this chapter, unless the parties agree to its application to solicitations and contracts issued and entered into prior to the effective date.
- B. This chapter is to be construed in a manner consistent with any applicable provision of the general and special laws of the State of Florida and shall not apply to the extent any provision is in conflict therewith, provided, however, the provisions of this chapter may supersede such general or special law where the general or special law permits such an application or interpretation.
- C. In all procurement decisions, even small dollar procurements, the Town official authorized to make the decision shall consider issues of risk of loss of property and injury to persons as to the commodities or services being acquired, and shall ensure the selected vendor provides adequate insurance and indemnification provisions.

Sec. 36-3. Exclusions from this chapter.

This chapter does not govern procurement of the following:

- A. *Grants and gifts.* This chapter shall not apply to purchases made with the proceeds from any grant, gift, bequest, or donation to the extent the application of this chapter would conflict with the requirements, conditions, or limitations attached to the grant, gift, bequest, or donation.
- B. *Lease or purchase of real property.* This chapter shall not apply to the acquisition of real property by lease, license or purchase, unless the commission determines to acquire such interest by a competitive solicitation.
- C. *Legal services.* This chapter shall not apply to retaining services of law firms or other outside counsel for any reason, nor to expert witnesses, appraisal services, trial consultants or similar persons of firms deemed by the town commission as necessary to address the town's legal needs. Such firms or persons shall be selected by the town commission or, when authorized by commission, the town attorney.
- D. *Non-profit funding agreements.* Funds expended by the town in the form of grants to non-profit entities performing economic development, social services, or similar public purposes.
- E. *Insurance policies.* This chapter shall not apply to the purchase of insurance policies to protect the property and other interests of the town.

- F. *Where specified by general law, ordinance or policies.* This chapter shall not apply to any purchase governed by explicit provisions of general law or other town ordinance or commission policies unless the solicitation indicates the applicability of this chapter, and this chapter shall apply only to the extent set out in the solicitation.
- G. *Town bonds.* This chapter shall not apply to professional services required for the issuance of town bonds and town investments related thereto.
- H. *Dues, memberships and subscriptions.* This chapter shall not apply to the payment of dues for memberships in professional or trade organizations, professional licenses, and trade publications or subscriptions.
- I. *Sale or conveyance of town owned real property.* This chapter shall not apply to the sale, conveyance or other disposition of real property owned by the town or any interest therein.
- J. *Legal advertisements and postage.* This chapter shall not apply to the town's acquisition of legal advertisements, nor to the cost of postage, shipping or courier services.
- K. *Lobbying services.* This chapter shall not apply to the town's acquisition of professional lobbyist services.
- L. *Title abstracts and title insurance.* This chapter shall not apply to funds expended for real property title abstracts or title insurance.
- M. *Utilities.* This chapter shall not apply to the town's acquisition of any utility, including electricity, gas, and communications services.
- N. *Professional development.* This chapter shall not apply to costs incurred in authorized professional development activities including registration, lodging, travel and meal costs to attend trade or professional seminars, trainings and conferences.
- O. *Items for resale.* This chapter shall not apply to the acquisition of items purchased for resale to the public.
- P. *Instructional materials.* This chapter shall not apply to the acquisition of instructional materials or copyrighted materials being purchased from the owner of the copyright.
- Q. *Town sponsored events.* This chapter shall not apply to expenditures related to town sponsored events, including venue and amusement rentals, entertainment and food.
- R. *Service/maintenance agreements.* Agreements to maintain or service equipment or software previously acquired by the town are not covered by this chapter.

Notwithstanding the foregoing, with the exception of the acquisition of utility services with rates established by the Florida Public Service Commission, a contract for the purchase of commodities

or services exempted in this section must be approved by the commission if the contract requires the expenditure of more than \$25,000.

Sec. 36-41. Small dollar purchases~~Informal prices or bids; approval of commission not required.~~

~~Purchases of commodities or services with an aggregate annual cost or contracts involving an expenditure of less than \$151,000.00 shall not require formal solicitations~~bids; however, whenever possible, a minimum of three (3) written quotes ~~informal prices or bids~~ shall be obtained prior to making such purchase ~~or expenditure~~. If any purchase ~~or contract~~ is in the amount of \$1,000.00 ~~or greater, but is less than the amount of \$2,500.00, informal prices or bids shall be obtained by the commissioner authorizing such expenditure, but such expenditure need not be presented to the town commission for approval.~~

Sec. 36-52. — Purchases requiring formal solicitation~~Competitive bidding; approval of commission required.~~

~~Purchases of commodities or services with an aggregate annual cost exceeding or contracts involving an expenditure of not less than \$2,500.00 or more than \$15,000.00 will be performed by use of a formal invitation to bid, request for proposals, invitation to negotiate or request for qualifications, depending on the desired commodity or service, whenever practical, shall be based upon competitive bidding under such rules and regulations as may be established by the commission. Solicitations in this category shall be published as broadly as practicable to obtain robust competitive responses, to include online solicitation distribution providers, the town's website, newspaper or trade publication advertisements, and directly sending the solicitation to known vendors~~Said bids may be informal but of which there shall be a written record, and purchases for such amounts shall only be made upon approval of the town commission.

Sec. 36-63. — Minimum solicitation requirements~~Sealed bids.~~

Solicitations for sealed bids shall include specifications and all contractual terms and conditions applicable to the procurement, shall incorporate, directly or by reference to, the standards and conditions upon which the bids will be evaluated and selected, and, in solicitations for other than sealed bids, shall include the manner in which negotiations shall be conducted~~If any single purchase or contract involves an expenditure of more than \$15,000.00, it shall be made on the basis of sealed bids after such public notice as may be prescribed by the commission.~~

Sec. 36-7. — Cancellation of solicitations and rejection of bids or proposals.

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids, proposals or offers may be rejected in whole or in part when it is determined to be in the best interests of the town. The reasons for the cancellation shall be made part of the town's files. Each solicitation issued by the town shall state that the solicitation may be canceled and that any bid, proposal, or offer may be rejected in whole or in part when in the best interest of the town. Notice of cancellation shall be provided to those vendors which have already submitted responses and published or posted in the same manner as notice of the solicitation. 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 procurements of similar items.

Sec. 36-8. – Source selection.

The methods and policies governing the selection of sources shall be those established in this chapter, or by administrative procedures and standards adopted by the town administrator, and may include, but shall not be limited to, competitive sealed bids, proposals, requests for qualifications, invitations to negotiate, proposals submitted for competitive negotiation, proposals for designated professional services, noncompetitive purchases, purchases with limited competition, emergency purchases, sole source purchases, piggyback and cooperative purchases, and any commission-adopted exceptions to the competitive selection procedure.

Sec. 36-9. – Waiver of competition.

Where not otherwise prohibited by law, the town commission is authorized to provide for the limited or complete waiver of competitive source selection policies and procedures upon a determination that the likely, non-speculative cost of competitive purchasing would exceed any potential savings and benefit to the town, or upon a determination that the acquisition of the goods or services should be provided by a unique source or provider based upon particular skills and expertise. Waivers may also be authorized for any purchase where required due to emergency conditions. Recommendations to the commission for all such determinations shall be made in writing by the town administrator. In the event emergency conditions prohibit the convening of the commission to grant a waiver of competition and compliance with normal procurement procedures, the town administrator is authorized to approve of such a waiver. Procurement activities which otherwise would have required commission approval must be ratified by the commission at its first regular meeting after the emergency condition has ceased.

Sec. 36-4. – Emergency situations.

~~—In the event of an emergency situation which creates a hazard to health or threatens the loss of property, such bid procedures shall not be required and may be waived by the Commissioner in charge of such project, but any such purchase or expenditure shall be subsequently ratified by the town commission.~~

Sec. 36-10. – Construction contracts.

- A. If a contract for construction of buildings or infrastructure is estimated, in accordance with generally accepted cost accounting principles, to cost more than the threshold amounts set forth in Florida Statutes § 255.20, such contract shall be competitively awarded to a licensed contractor fully legally authorized to conduct business in Florida by use of the competitive solicitation rules set forth in that statute.
- B. The selection procedures shall be consistent with this division and policies and procedures adopted by the town commission. In addition to such other solicitation publication methods

used by the town, construction projects projected to cost more than \$200,000 must be advertised in the manner set forth in Florida Statutes § 255.0525(2)-(5).

- C. Projects shall not be divided so as to evade the threshold amounts listed in Florida Statutes § 255.20. Unless otherwise defined by law, as used in that subsection, the term “project” shall not include those portions of multiyear capital improvement projects not funded beyond the current fiscal year. The term shall also not include any series of construction activities on a new or existing town facility which, if aggregated, would exceed the threshold amounts, but which were not undertaken contemporaneously with each other, were not part of an overall coordinated construction or renovation effort, and which were not performed under the same construction permit.

Sec. 36-5. – Power of commission to reject bids.

~~—The commission shall have the power in respect to all purchases or contracts to reject any and all bids, to readvertise for bids or to make the purchase or contract in the open market after the rejection of all bids, provided that any such purchase or contract on the open market shall not exceed the price of the lowest responsible bidder of the bids rejected.~~

Sec. 36-116. – ~~Procuring certain~~ Power of commission to purchase professional services.

- A. Unless prevented from doing so based on a valid public emergency, when the town procures architecture, professional engineering, landscape architecture, or registered surveying and mapping services, it shall, when such services must be procured for a project the basic construction cost of which is estimated by the town to exceed the the category five threshold amount, or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in category two, as those categories are set forth in Florida Statutes § 287.017, engage in the competitive solicitation process set forth in Florida Statutes § 287.055.
- B. Nothing in subsection (a) above shall be construed to prohibit a continuing contract, as defined by Florida Statutes § 287.055(2)(g), between an architecture, professional engineering, landscape architecture, or registered surveying and mapping services firm and the town.

~~The commission shall have further power to purchase or make contracts for professional services~~

Sec. 36-12. – Sole source procurement.

- A. Commodities or contractual services. Commodities or contractual services available only from a single source may be excepted from any otherwise applicable solicitation requirements provided in this chapter. When the town believes that desired commodities or contractual services are available only from a single source, the town’s procurement staff shall electronically post on the town’s website or online solicitation platform used by the town a description of the commodities or contractual services sought. The posting shall be for a period of at least five (5) business days. The description must include a request

that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. Posting shall not be required for desired small dollar commodities or contractual services. If it is determined in writing by the town administrator, after reviewing all relevant information including information received from prospective vendors as a result of a required posting, that the commodities or contractual services are in fact available only from a single source, the town may negotiate and enter into a sole source agreement.

B. *Construction materials.* In any case where the town seeks to purchase from a sole source materials for the construction, modification, alteration, or repair of any town-owned facility, the commission must first make the written findings required by Florida Statutes § 255.04.

Sec. 36-13. Cooperative procurement, piggybacking.

A. *Cooperative procurement.* Unless otherwise prohibited by law or grant agreement terms, the town is authorized to negotiate with other public entities or procurement officials for the conduct of a joint procurement on behalf of each participating public agency where, in the judgment of the town administrator, doing so would leverage the benefits of volume purchases, create clear delivery and/or supply chain advantages, and/or create a demonstrable and substantial reduction of administrative time and expense. Examples of cooperative procurement events can include joint solicitations or use of a third-party aggregator or broker.

B. *Piggybacking.*

(1) In any agreement for the acquisition of goods or services between the town and a vendor which has resulted from a competitive solicitation process, the town administrator is authorized to include a term authorizing the agreement to be utilized by other public agencies to acquire the same goods or services.

(2) The town administrator is authorized to acquire goods or services by use of an existing agreement between a vendor and another public agency where such agreement has resulted from a competitive solicitation process. Purchases made in this manner should not substantially differ in specification, scope, quality or price from the terms of the initial agreement. The piggybacking agreement must be consistent with the parameters, requirements and restrictions of the initial agreement.

Sec. 36-147. — Recordkeeping compliance.

A. A record of all ~~solicitations~~~~bids~~ showing the names of the ~~responding vendors~~~~bidders and~~ the ~~terms of the solicitation responses~~~~, amounts of the bids~~ and indicating in each case the successful ~~vendor~~~~bidder~~, together with the original of all sealed bids ~~or proposals~~ and other documents pertaining to the award of contracts, shall be preserved by the town in a file which shall be ~~retained pursuant to the relevant state records retention schedules and~~ open to public inspection during regular business hours.

B. Pursuant to Florida Statutes, Section 119.0701, in any agreement entered into by the town wherein the contractor is acting on behalf of the town, the contractor must:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the town in order to perform the service.
- (2) Provide the public with access to public records on the same terms and conditions that the town would provide the records and at a cost that does not exceed the cost provided in Florida Statutes, Chapter 119 or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (4) Meet all requirements for retaining public records and transfer, at no cost, to the town all public records in possession of contractor upon termination of the agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the town in a format that is compatible with the town's information technology systems.

Sec. 36-15. – Trade secrets.

A. Florida law provides that trade secret information, as defined in Florida Statutes § 812.081(1)(c), is confidential and exempt from public records disclosure.

B. Upon receipt of a response to a procurement solicitation, the town will not be aware that a bid, proposal, or other response contains such information. Therefore, bidders, proposers or other persons or entities responding to town solicitations must specifically and clearly identify all portions of their responses which are believed to be a trade secret, as defined by the law, and must, as to each such designation, provide the basis upon which the designated information is a trade secret. The mere designation of an entire submission as “confidential” will be insufficient to comply with this requirement. Absent some unusual justification, a bidder's or proposer's contract price shall not constitute a trade secret.

C. While the town will, to the extent possible, cooperate in any court action a bidder, proposer or responder may bring against any third-party requesting to inspect and copy portions of a response asserted to be a trade secret, if a bidder, proposer or responder fails, prior to the submission of their materials to the town, to specifically and clearly designate information therein as a trade secret and to provide the supporting explanation for the designation, the right to assert the exemption may be lost, and the information may be subject to inspection and copying as otherwise provided for under Florida's Public Records Act.

D. In the event any record designated as a trade secret is requested under the Act, town staff will consult with the town's legal counsel and, if the town's legal counsel agrees with the designation, the town will assert the exemption and redact the relevant materials. If the

town's legal counsel disagrees with the designation, town staff will inform the bidder, proposer or responder and that person or entity may file an injunctive or declaratory judgment action and seek such emergency orders as desired to protect the information.

Sec. 36-16. – Unauthorized purchases, ethical conduct, sanctions.

- A. *Prohibition.* Except as provided in this chapter, it shall be a violation of this chapter for any town officer, employee, or other person, to knowingly and willingly order the purchase of any goods, or make any contract for goods or services, sell, trade or dispose of material within the purview of this chapter in the name of or on behalf of the town, except as provided by policies of the town commission, and the town shall not be bound by any purchase order or contract made contrary to the provisions herein.
- B. *Ethical conduct and sanctions.* In addition to any sanctions provided for in the town's personnel policies or sections of this code, any town employee who violates subsection (a) above, or any statute concerning ethical conduct in procurement may, when found by the town administrator or town commission to have committed such violation, be required to forfeit all or any part of any accrued leave balances he/she may otherwise have as of the date the violation is confirmed by the commission or administrator. In determining whether such forfeiture shall be required, the town shall consider the nature and severity of the offense, the relative financial or legal harm to the town, the employee's prior disciplinary record, and whether the employee was in a managerial or special trust position.

Sec. 36-17. – Conflicts of interest.

- A. *Prohibiting contracts where conflicts are found to exist.* The town shall not engage in contracts with consultants or professionals whose prior record, work history and experience indicate ongoing business relationships that may be substantially in conflict with the duties and services that will be required by the town.
- B. *Standards and regulations for the determination of potential conflicting contractual obligations.* The town administrator or designee shall develop standards and regulations for the prospective determination of potential conflicting contractual obligations that may impair the performance of the professionals or consultants solicited by the town. The standards and regulations shall set forth appropriate requirements based upon the nature and scope of the services that are to be procured and shall be narrowly tailored so as to not unduly restrict competition, while assuring the town of undivided loyalty and services of the highest quality. The standards and regulations may require, but shall not be limited to, the inclusion of the following in a request for proposals, invitation for bids, announcement or other solicitation or contract for professional or consulting services:
- (1) An affidavit providing that the professional or consultant is not currently engaged or will not become engaged in any obligations, undertakings or contracts that will require the professional to maintain an adversarial role against the town or that will impair or influence the advice or recommendations provided to the town;

(2) The disclosure of all potentially conflicting contractual relationships and the full disclosure of contractual relationships deemed to raise a serious question of conflicts.

C. *Consequences for violation of ethical standards.* In addition to any other penalty or consequence provided for in law or this code, any professional or consultant submitting false information to or on behalf of the town, disclosing or releasing information concerning an actual or planned procurement activity which information is deemed confidential or is otherwise not known to the general public or otherwise repeatedly failing to comply with the town's ethical standards and regulations shall be deemed to be in violation of this code and shall be subject to prosecution, state ethics complaints, reporting to professional or licensing authorities, contract cancellation, suspension and/or debarment, as the town deems appropriate.

D. *Professional and consultant defined.* Professional or consultant as used in this section shall be deemed to include those contractors who, as individuals or duly organized business entities, have been or will be retained by the town for the purpose of providing recommendations or advice related to planning level or policy level decisions, or who will be engaged in the collection of data or research that will provide the basis for such decisions or future plans and actions of the town, as well as those who will be retained to supervise and monitor the performance of contractors or subcontractors of any nature.

Sec. 36-19. – Lobbying limitations.

After the issuance of any solicitation, or during renegotiation of an existing contract, no prospective offerors or their agents, representatives or persons acting at the request of such offerors shall contact, communicate with, or discuss any matter relating to the solicitation or the renegotiation with any town officers, agents or employees other than the town administrator or the administrator's designated purchasing agent identified in the solicitation, unless otherwise provided for in the solicitation or otherwise directed by the administrator or purchasing agent. This prohibition includes copying such persons on written communications with the purchasing agent, but does not apply to presentations made to evaluation committees or at a town commission meeting where the commission is considering approval of a proposed contract, and ends upon execution of the final contract or when the solicitation has been canceled or the renegotiation efforts are terminated. Renegotiation will be deemed to have commenced upon vote of the commission directing renegotiation or written notice from the purchasing agent to the existing contractor instituting a renegotiation process. Failure to adhere to this section will result in the offender's bid or proposal being disqualified from further consideration.

Sec. 36-20. – Prohibition against award to certain persons or entities.

No person or business entity shall be awarded a contract by the town for the provision of commodities or services if that person or entity:

A. Has been convicted of bribery or attempting to bribe a public officer or employee of the town, the State of Florida, or any other public entity, including but not limited to the

Government of the United States, any state, or any local government authority in the United States, in that officer's or employee's official capacity; or

B. Has been convicted of a conspiracy or collusion among prospective offerors in restraint of freedom of competition, by agreement to offer a fixed price, or otherwise; or

C. Has been convicted of a violation of an environmental law that, in the reasonable opinion of the town administrator, establishes reasonable grounds to believe the person or business entity will not conduct business in a responsible manner; or

D. Has made an admission of guilt of such conduct described in subsections (a), (b) or (c) above, which is a matter of record, but has not been prosecuted for such conduct, or has made an admission of guilt of such conduct, which is a matter of record, pursuant to formal prosecution.

~~Sec. 36-8. -- Division of transaction prohibited.~~

~~—No transaction which is essentially a unit shall be divided for the purpose of evading the intent of this section.~~

~~Sec. 36-9. -- State bid list.~~

~~—No bids shall be required whenever purchases are made pursuant to the state bid list or whenever an item is on the state bid list and the purchase is being made for a lesser amount than that contained on the state bid list.~~

~~Sec. 36-10. -- Acceptance of bids procured by other governmental entities.~~

~~—Notwithstanding the other provisions of this article, in lieu of the competitive bidding procedures specifically provided for herein, the commission shall be authorized to accept a bid proposal or contract which has been secured by any other governmental entity or agency thereof, or procured through a competitive bidding process which is equal to or more stringent than the competitive bidding process required by this article, or make a purchase or enter into a contract for specific materials or specifications as bid in such other proposals or contracts provided, however, that such acceptance shall be subject to town commission approval as provided herein.~~

~~Sec. 36-11. -- Authority of commission to waive provisions.~~

~~—By supermajority vote of the commission present and voting, the commission can waive any of the provisions of this article when it finds that sufficient factors exist such that the obtaining of bids is not practical.~~

Section 2. For purposes of codification of any existing section of the Redington Shores Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Redington Shores Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the __ day of _____, 2022, by the Board of Commissioners of the Town of Redington Shores, Florida.

ADOPTED ON SECOND AND FINAL READING on the __ day of _____, 2022, by the Board of Commissioners of the Town of Redington Shores, Florida.

Attest:

MaryBeth Henderson, Mayor Commissioner

Tracy Campbell, Town Clerk