

ARTICLE VIII. PURCHASING*

***Editor's note:** Ord. No. 97-19, § 1, adopted July 16, 1997, supplied provisions to be set out as §§ 2-702--2-728. In order to preserve the numbering system of the Code, and at the editor's discretion, these provisions have been set out as §§ 2-351--2-406 to read as set out herein.

DIVISION 1. GENERALLY**Sec. 2-351. Short title; purpose.**

(a) The provisions of this article shall be known and cited as the Purchasing and Bidding Ordinance of the Town of Ponce Inlet.

(b) The purpose of these purchasing and bidding policies is to afford the public protection by preventing favoritism toward contractors by public officials, to encourage fair competition by providing equal terms and criteria for awarding contracts, and to ensure that the town receives the best possible cost for goods and services it purchases.

(Ord. No. 97-19, § 1(2-701), 7-16-97; Ord. No. 2009-02, § 2, 2-18-2009)

Sec. 2-352. Supplementary general principles of laws applicable; state law.

(a) Unless specifically displaced by particular provisions of this article, the principles of law and equity, the Uniform Commercial Code, the law of merchants, the law relative to capacity to contract, principal and agent, fraud, misrepresentation, duress, coercion, mistake or bankruptcy shall supplement the provisions of this article.

(b) The purchasing, bidding, and notice requirements of this article are not applicable to purchases of services, goods, and commodities governed by statute, including but not limited to F.S. §§ 180.24, 218.391, 255.0525(2), 255.20, and 287.055, as amended from time to time.

(Ord. No. 97-19, § 1(2-702), 7-16-97; Ord. No. 2009-02, § 2, 2-18-2009)

Sec. 2-353. Requirement of good faith; background investigation.

This article requires all parties involved in the bidding, proposing, negotiations, performance, or administration of town contracts to act in good faith. As part of the evaluation process, the town may conduct a background investigation, including a record check by the town police department, of bidders and proposes, submission of a bid or proposal constitutes acknowledgment of this process and consent to such investigation.

(Ord. No. 97-19, § 1(2-703), 7-16-97)

Sec. 2-354. Application.

This article shall apply to all expenditures of public funds by this town unless exempted by specific action of the town council. This article shall not apply to contracts between the town and non-profit organizations or other governmental agencies or entities.

(Ord. No. 97-19, § 1(2-704), 7-16-97; Ord. No. 2009-02, § 2, 2-18-2009)

Sec. 2-355. Construction against implicit repealer.

This article is intended to provide uniform coverage of its subject matter. No part of this article shall be deemed to be impliedly repealed by subsequent legislation, if such construction of the subsequent legislation can be reasonably avoided.

(Ord. No. 97-19, § 1(2-705), 7-16-97)

Sec. 2-356. Definitions.

Competitive sealed bids or competitive sealed proposals means the process of receiving two or more sealed bids or proposals submitted by responsive vendors or service providers and may include bids or proposals transmitted by electronic means in lieu of or in addition to written bids or proposals.

Purchases or purchasing includes purchases of supplies, goods, commodities, and services (excluding professional services) unless otherwise specified in this article.

Request for bids or invitation to bid means a written solicitation by the town for competitive sealed bids. The invitation to bid is used when the town is capable of specifically defining the scope of work for which a contractual service is required or when the town is capable of establishing precise specifications defining the actual supplies, goods, or commodities, or group of supplies, goods, or commodities required. A written request for bid may include a request that is electronically posted by the town.

Request for proposals means a written solicitation for competitive sealed proposals with the title, date and hour of the public opening designated. The request for proposals is used when the town is incapable of specifically defining the scope of work for which the commodity, group of commodities, or contractual service is required and when the town is requesting that a qualified offeror propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document. A request for proposals includes, but is not limited to, general information, applicable laws and rules, functional or general specifications, statement of work, proposal instructions, and evaluation criteria. A written request for proposals may include a request that is electronically posted by the town.

(Ord. No. 97-19, § 1(2-706), 7-16-97; Ord. No. 2009-02, § 2, 2-18-2009; Ord. No. 2009-10, § 1, 8-20-2009)

Sec. 2-357. Sole source; standardization/piggybacking.

(a) Where there is a sole source, where standardization (also known as "piggybacking") is determined to be in the best interest of the town, or where solicitation of bids is otherwise deemed to be inappropriate, the purchase may be made by negotiation without regard to the estimated cost.

(b) *Sole source* is defined as:

(1) It is the only item or service that will produce the desired result or fulfill the town's specific need. Compatibility with existing equipment shall be in acceptable justification for waiver of bidding requirements, provided the item or service is only available from a sole source; or

- (2) The item or service is available from only one source of supply; or
- (3) The item or service is available from more than one supplier, but due to extreme circumstances, only one supplier is suited to provide the goods or services.
- (4) The town manager or designee shall attempt to locate competition or other sources of supply prior to making the decision to award based upon sole source and shall document attempts made. No award to a sole source may be given for an estimated purchase in excess of \$10,000.00 without town council approval. Town council approval is not required for contracts under this section for amounts of \$10,000.00 or less.
- (5) Standardization, or "piggybacking," is defined as purchasing, without town invitation to bid or request for proposal, by utilizing an existing contract of the town or other public entity when such contract was awarded as a result of a procurement process similar to that of this article. The vendor-party of the existing contract must be willing to extend the contract to the town under the same terms and conditions as the existing contract. Contracts which have expired more than 24 months cannot be piggybacked. No piggyback award may be given for an estimated purchase in excess of \$10,000.00 without town council approval. Town council approval is not required for contracts under this section for amounts of \$10,000.00 or less.

(Ord. No. 2009-02, § 2, 2-18-2009; Ord. No. 2009-10, § 1, 8-20-2009)

Sec. 2-358. Emergency purchases.

- (a) In case of any apparent emergency which requires immediate purchase of supplies, equipment or contractual services (excluding legal services), the town manager, or the manager's designee, is authorized to secure by open market procedure as herein set forth, at the lowest obtainable price, any such supplies, equipment or contractual services.
- (b) *Emergency* is defined as:
 - (1) An incident or accident or equipment breakdown, which jeopardizes public health, welfare, and safety; or
 - (2) An incident, accident, or equipment breakdown which could result in adverse financial consequences for the town, and sufficient time is not available to follow the bid requirements of this article.
- (c) During working hours, a verbal authorization by the town manager, or the manager's designee, is required without a purchase order being required. If an emergency occurs during nonworking hours or on weekends, the appropriate department head or his designee is authorized to correct the problem. Proper paperwork must follow within one working day.
- (d) The town manager is granted authority to correct the problem even if the price exceeds \$10,000.00. Unless sole source, at least three telephone bids are required and an immediate written report must be made to the town council if the price exceeds \$10,000.00.
- (e) Where possible, council approval must be received prior to authorization.

(Ord. No. 2009-02, § 2, 2-18-2009; Ord. No. 2009-10, § 1, 8-20-2009)

Sec. 2-359. Authority of town manager; contracts in writing.

- (a) Purchases of an estimated value of \$10,000.00 or less may be made by the town manager in the open market without newspaper advertisement and without observing the formal bidding and proposal procedures set forth in this article.

(b) The town manager is hereby granted authority to adopt any and all such additional administrative policies and procedures supplemental to the provisions of this article that are in the best interests of the town, and not inconsistent with the intent of this article.

(c) All purchases of goods in the amount of \$500.00 or more must be in writing, must identify both parties, the contract's subject matter, terms and conditions of the contract, sale amount, and the signature of the town manager.

(Ord. No. 2009-02, § 2, 2-18-2009; Ord. No. 2009-10, § 1, 8-20-2009)

Sec. 2-360. Reserved.

DIVISION 2. PURCHASING THRESHOLDS

Sec. 2-361. Small purchases less than and including one thousand dollars.

The town manager shall adopt operational procedures for making small purchases of less than and including \$1,000.00. Such operational procedures shall provide for obtaining adequate and reasonable competition for the supply, service or construction being purchased and shall provide for two signatures, one of which shall be that of the town manager, on all invoices.

(Ord. No. 97-19, § 1(2-707), 7-16-97; Ord. No. 2006-11, § 1, 7-19-2006; Ord. No. 2009-02, § 2, 2-18-2009)

Sec. 2-362. Small purchases in excess of one thousand dollars and up to and including ten thousand dollars.

(a) For all purchases in excess of \$1,000.00 up to and including \$10,000.00, no less than three businesses shall be solicited to submit quotations. Businesses within the town shall be used to the maximum extent feasible. Award shall be made to the business offering the lowest acceptable quotation.

(b) The town manager is authorized to make purchases or amend contracts as provided for in this section. For purchases in excess of \$1,000.00 but less than and including \$3,500.00, quotations may be verbal or written. For purchases in excess of \$3,500.00 and up to and including \$10,000.00, all quotations shall be in writing and the names of the businesses submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record.

(Ord. No. 97-19, § 1(2-708), 7-16-97; Ord. No. 2006-11, § 1, 7-19-2006; Ord. No. 2009-02, § 2, 2-18-2009; Ord. No. 2009-10, § 1, 8-20-2009)

Sec. 2-363. Large purchases.

All purchases, except as otherwise provided herein, when the estimated cost thereof exceeds \$10,000.00, shall be made by formal written contract from the lowest responsible bidder, after due notice formally inviting proposals or bids.

(Ord. No. 97-19, § 1(2-709), 7-16-97; Ord. No. 2006-11, § 1, 7-19-2006; Ord. No. 2006-21, § 1, 11-15-2006; Ord. No. 2009-02, § 2, 2-18-2009; Ord. No. 2009-10, § 1, 8-20-2009)

Sec. 2-364. Competitive sealed proposals.

When the town manager determines in writing that the use of competitive sealed, bidding is either not practicable or not advantageous to the town, a contract may be entered into by use of a request for proposals.

(Ord. No. 97-19, § 1(2-710), 7-16-97; Ord. No. 2006-11, § 1, 7-19-2006; Ord. No. 2009-02, § 2, 2-18-2009)

Sec. 2-365. Professional services.

Professional services, with an estimated cost in excess of \$10,000.00, shall be procured in accordance with the selection procedures specified in division 5 of this article. Professional legal services shall be procured in accordance with the selection procedures set forth in division 5 of this article, regardless of the estimated cost.

(Ord. No. 97-19, § 1(2-711), 7-16-97; Ord. No. 2006-11, § 1, 7-19-2006; Ord. No. 2006-21, § 2, 11-15-2006; Ord. No. 2009-02, § 2, 2-18-2009; Ord. No. 2009-10, § 1, 8-20-2009)

Sec. 2-366. Consultants' Competitive Negotiation Act.

All professional services falling within the scope and threshold amounts of the Consultants' Competitive Negotiation Act shall be procured as provided for in F.S., § 287.055, as amended.

(Ord. No. 97-19, § 1(2-712), 7-16-97; Ord. No. 2006-11, § 1, 7-19-2006; Ord. No. 2009-02, § 2, 2-18-2009)

Sec. 2-367. Alterations or modifications of contracts.

Where in the opinion of the town manager it becomes necessary for the prosecution of any work or improvement under contract to make alterations or modifications in such contract, such alterations or modifications may only be affected as follows:

- (1) If the original contract amount is equal to or less than \$40,000.00, a modification not to exceed five percent of the original contract price may be authorized by the town manager. Modifications in excess of five percent must be authorized by the town council.
- (2) If the original contract amount exceeded \$40,000.00, any modification less than \$2,000.00 may be authorized by the town manager.
- (3) Any modification to any contract which changes the original contract price by more than \$2,000.00 must be authorized by the town council.

(Ord. No. 97-19, § 1(2-713), 7-16-97; Ord. No. 2006-11, § 1, 7-19-2006)

Secs. 2-368--2-375. Reserved.

DIVISION 3. REQUEST FOR BIDS

Sec. 2-376. Bidding procedure.

Unless otherwise required by statute, for all purchases and sales requiring formal invitation request for bids, the following shall be followed:

(1) *Notice inviting bids:*

a. *Newspaper.* Notice inviting bids shall be published once in at least one newspaper published in Volusia County, and having general distribution in the town, at least ten days preceding the last day set for the receipt of bids.

b. *Scope of notice.* The newspaper notice required herein shall include, at a minimum, a general description of the articles to be purchased or sold or the contractual services desired, shall state where bid blanks and specifications may be secured, and the time and place for opening bids.

c. *Private solicitation of bids.* The town manager may solicit either oral or written bids for open market pricing or sale, but shall use all reasonably available and current bidders' lists. For purchases in excess of \$1,000.00 but less than and including \$3,500.00, quotations may be verbal or written. For purchases in excess of \$3,500.00, all quotations shall be in writing and the names of the businesses submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record.

d. *Prebid conference.* A prebid conference will be held wherever whenever practicable.

(2) *Bid deposits.* When deemed necessary by the town manager, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to the return of surety where the town manager has required such. A successful bidder shall forfeit any surety required by the town manager upon failure on his part to enter a contract within ten days after the award.

(3) *Bid-opening procedure.*

a. *Sealed bids.* Bids shall be required to be submitted to the town manager in a sealed envelope, the outside of which shall be clearly labeled to show that it contains a bid.

b. *Opening.* Bids shall be opened in public at the time and place stated in the notices.

c. *Tabulation.* A tabulation of all bids received shall be made and shall be available for public inspection.

(4) *Rejection of bids.*

a. *Report of tabulation; authority of town manager to reject bids.* The town manager shall report the tabulation of all bids received. The town manager shall have the authority to reject all bids, parts of all bids, or all bids when the public interest will be served thereby, and in such event, the town manager shall explain in writing to the town council the reason or reasons for the rejection of the bid.

b. *Bidders in default to the town.* The town manager shall not accept the bid of a contractor who is in default on payment of taxes, licenses or other monies due the town.

(Ord. No. 97-19, § 1(2-714), 7-16-97; Ord. No. 2009-02, § 2, 2-18-2009)

Sec. 2-377. Rejecting of bids and rebidding.

The town council shall have the authority to reject any and all bids. If the lowest and best bid exceeds the budgeted amount and the town council does not make additional funds available or reduce the scope of work to bring the item into budget, the town manager shall have the authority to re-advertise the article or articles for bidding after making sufficient changes in the plans or specifications to bring the cost within the limit of the money available.

(Ord. No. 97-19, § 1(2-715), 7-16-97; Ord. No. 2009-02, § 2, 2-18-2009)

Sec. 2-378. Waiver of irregularities.

The town council shall have the authority to waive any and all nonsubstantial irregularities in any and all formal bids.

(Ord. No. 97-19, § 1(2-716), 7-16-97)

Sec. 2-379. Determination of lowest and best bidder.

In determining the lowest and best responsible bidder, in addition to price, there will be considered the following:

- (1) The ability, capacity and skill of the bidder to perform the contract.
- (2) Whether the bidder can perform the contract within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- (4) The quality of performance of previous contracts.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- (8) The ability of the bidder to provide further maintenance and service for the use of the subject of the contract.
- (9) The number and scope of conditions attached to the bid.
- (10) Such other factors as appear to the town council or the town manager to be pertinent to the bid or the contract under all of the circumstances involved. Such factors shall be set forth in the request for bid or proposal.

(Ord. No. 97-19, § 1(2-717), 7-16-97; Ord. No. 2009-02, § 2, 2-18-2009)

Sec. 2-380. Reserved.

Editor's note: Ord. No. 2009-02, § 2, adopted Feb. 18, 2009, deleted § 2-380 in its entirety. Former § 2-380 pertained to sole source; standardizations and derived Ord. No. 97-19, § 1(2-718), adopted July 16, 1997.

Sec. 2-381. Local preferences.

In the purchase of, or contract for, personal property or contractual services, the town council may give a preference in an amount not to exceed three percent of the bid price to local persons, firms or corporations; provided, however, that this section in no way prohibits the right of the town council to compare quality of materials proposed for purchase and to compare qualifications, character, responsibility and fitness of all persons, firms, or corporations submitting bids. Local persons, firms or corporations shall be defined as those whose principal place of business is located within the municipal boundaries of the Town of Ponce Inlet, County of Volusia, Florida.

(Ord. No. 97-19, § 1(2-719), 7-16-97)

Sec. 2-382. Disposal of town personal property.

(a) All sales of personal property (except trade-in personal property) which has become obsolete or unusable or the sale of which is otherwise determined to be in the best interest of the town, when the estimated value exceeds \$3,000.00, shall be made to the highest responsible bidder pursuant to the formal bidding procedure of this article. Acceptance or rejection of bids for such sales shall be made by the town council. The town manager, or such person as he may designate in writing, is authorized to execute any and all title transfers, bills of sale or other documents necessary to convey and transfer such property to the successful bidder.

(b) All sales of personal property (except trade-in personal property) which has become obsolete or unusable or the sale of which is otherwise determined to be in the best interest of the town, when the estimated value is \$3,000.00 or less, may be sold upon the written approval of the town manager. Notice of such sale shall be posted in town hall and, insofar as is practicable and reasonable, written and sealed bids should be solicited. notwithstanding the foregoing, such property may be sold by negotiated sale, auction or other procedure approved by the town manager. Formal advertising or compliance with the formal bidding procedure shall not be required. The town manager, or such person as he shall designate in writing, is authorized to execute any and all transfers, bills of sale or other documents necessary to convey and transfer such property to the purchaser thereof.

(Ord. No. 97-19, § 1(2-720), 7-16-97)

Sec. 2-383. Reserved.

Editor's note: Ord. No. 2009-02, § 2, adopted Feb. 18, 2009, deleted § 2-383 in its entirety. Former § 2-383 pertained to cooperative purchasing and retention of professional services and derived from Ord. No. 97-19, § 1(2-721), adopted July 16, 1997; and Ord. No. 2001-29, § 1(2-721), adopted Jan. 16, 2002.

Sec. 2-384. Performance and payment bonds.

A contractor or vendor may be required to provide a corporate surety bond from a surety company authorized to do business in Florida to guarantee the full and faithful performance of his contract obligations and the payment of labor and material expended pursuant to the contract whenever and in such amounts as are deemed necessary by the town manager. All such bonds shall be approved as to form by the town attorney.

(Ord. No. 97-19, § 1(2-722), 7-16-97)

Sec. 2-385. Reserved.

Editor's note: Ord. No. 2009-02, § 2, adopted Feb. 18, 2009, deleted § 2-383 in its entirety. Former § 2-385 pertained to informal bid procedures and derived from Ord. No. 97-19, § 1(2-723), adopted July 16, 1997.

Sec. 2-386. Reserved.

Editor's note: Ord. No. 2009-02, § 2, adopted Feb. 18, 2009, deleted § 2-383 in its entirety. Former § 2-385 pertained to emergency purchases and derived from Ord. No. 97-19, § 1(2-724), adopted July 16, 1997.

Secs. 2-387--2-390. Reserved.

DIVISION 4. REQUEST FOR PROPOSALS

Sec. 2-391. Formal procedure.

The procedure utilized by the town in soliciting formal requests for proposals shall be as follows:

- (1) *Request for proposals.* Proposals shall be solicited through a request for proposals.
- (2) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided for formal bids, provided the minimum time shall be 30 calendar days.
- (3) *Receipt of proposals.* No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation.
- (4) *Evaluation factors.* The request for proposals shall state the relative importance of price and other evaluation factors.
- (5) *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.
- (6) *Award.* Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the town, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation.

(Ord. No. 97-19, § 1(2-725), 7-16-97; Ord. No. 2009-02, § 2, 2-18-2009)

Secs. 2-392--2-395. Reserved.

DIVISION 5. PROFESSIONAL SERVICES

Sec. 2-396. Selection procedure.

(a) Professional services shall be procured in accordance with this subsection.

(1) *Statement of qualifications.* Persons engaged in providing the types of professional services desired may submit statements of qualifications and expressions of interest in providing such professional services. A uniform format for statements of qualifications may be specified by the town. Persons may amend these statements at any time prior to any specified deadline by filing a new statement.

(2) *Public announcement and form of request for proposals.* Adequate notice of the need for such services shall be given by the town through a request for proposals. The request for proposals shall describe the services required and list the types of information and data required of each offeror.

(3) *Advertisement.* The town manager shall advertise the town's request for proposals in a publication, which in his or her opinion, will lead to the greatest number of inquiries by qualified persons. A copy of the request for proposals shall also be posted and available at town hall.

(4) *Quotation of proposed fees.* All those interested persons submitting proposals shall include a quotation of their proposed fees for the performance of their services on behalf of the town. The quotation of proposed fees shall include rates, fees, charges and other detailed cost proposal or cost breakdown information as may be required by the town's request for proposals. The fees quoted shall be considered as one factor in determining the person to render services to the town.

(5) *Discussions.* The department head procuring the required professional services or a designee of such officer may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(6) *Opening of submittals.* All proposals received from interested parties shall remain sealed until the deadline, as specified in the request for proposals, at which time they shall be opened, distributed to the town council members and made available for review by the public.

(7) *Town council determination.* At a meeting of the town council, to which all those submitting proposals may attend, the town council shall review the proposals and hear presentations, from those individuals or entities wishing to make them, and shall make a selection based upon considerations of qualifications, experience, scope of services, fee and such other information and data as set out in the request for proposals.

(8) *Contract.* A contract shall be prepared between the individual or entity selected by the town council and the town.

(9) *Rejection of all proposals.* If, for some reason, the contract cannot be entered into, the town council shall reconsider the remaining proposals until such time as an individual

or entity is brought under contract. However, if for any reason the town council is dissatisfied, in any way, with the proposals submitted, the town council may, at its complete and absolute discretion, elect to terminate the selection process and request that it be reinitiated.

(b) The procurement process set forth in subsection (a) herein shall not be required when:

(1) The town manager, appropriate department director, and town attorney agree that the services of another attorney are required in a quasi-judicial proceeding to represent staff or a quasi-judicial board.

(2) The town manager determines that legal advice or services are needed from a labor and employment attorney who provides such services to the town on an on-going basis.

(3) The town manager, appropriate department director, and town attorney agree, or the town council determines, that the services of another attorney is necessary to defend a public officer, employee, or agent of the town, or the town, in an imminent or pending lawsuit.

(4) Legal services are provided by the town's insurer.

(5) An attorney or other consultant representing or retained by the town has a conflict of interest on a matter, and the town manager, appropriate department director, and town attorney agree, or the town council determines that another attorney or consultant is required for that matter.

(6) The town manager, appropriate department director, and town attorney agree that an expert is necessary in a quasi-judicial proceeding or imminent or pending litigation.

(7) In all instances set forth in this subsection, when possible, council approval must be received prior to hiring an attorney or other consultant. If council approval cannot be received prior to hiring an attorney or consultant, an immediate report to town council must be made.

(Ord. No. 97-19, § 1(2-726), 7-16-97; Ord. No. 2009-02, § 2, 2-18-2009; Ord. No. 2009-10, § 1, 8-20-2009)

Sec. 2-397. Designated professional services.

The town council may establish by resolution specific selection procedures and criteria for designated professional services.

(Ord. No. 97-19, § 1(2-727), 7-16-97; Ord. No. 2009-10, § 1, 8-20-2009)

Sec. 2-398. Cooperative purchasing and retention of professional services.

The town manager may elect to join with other state, federal or local governmental units in cooperative purchasing and retention of professional services ventures when the best interests of the town would be served thereby, provided the same is in accordance with all applicable laws. Town council approval is not required for contracts under this section for amounts of \$10,000.00 or less. Contracts under this section for amounts in excess of \$10,000.00 require town council approval.

(Ord. No. 2009-02, § 2, 2-18-2009; Ord. No. 2009-10, § 1, 8-20-2009)

Secs. 2-399, 2-400. Reserved.

DIVISION 6. APPEALS**Sec. 2-401. Appeals and remedies.**

(a) *Authority of the town manager to settle bid protests and contract claims.* The town manager 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.

(b) *Bid protests.*

(1) *Right to protest.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the town council. Protesters are urged to seek resolution of their complaints initially with the town manager. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within five calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

(2) *Stay of procurements during protests.* In the event of a timely protest under subsection (b)(1), the town manager shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the town council makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the town.

(c) *Remedies for solicitations 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 town manager, after consultation with the town attorney, determines that a solicitation is in violation of federal, state or municipal law, then the solicitation shall be cancelled or revised to comply with applicable law.

(2) *Prior to award.* If, after bid opening or the closing date for receipt of proposals, the town manager, 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, then the solicitation or proposed award shall be cancelled.

(3) *After award.* If, after an award, the town manager, after consultation with the town attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:

- a. If the person awarded the contract has not acted fraudulently or in bad faith:
 1. The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the town; or
 2. The contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
- b. If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the town.

(Ord. No. 97-19, § 1(2-728), 7-16-97)