

**ORDINANCE NO. 2017-021**

**AN ORDINANCE OF THE CITY OF OCOEE, FLORIDA, REPEALING CHAPTER 4 DESIGN BUILD CONTRACTS AND AMENDING CHAPTER 21 OF THE CODE OF ORDINANCES OF THE CITY OF OCOEE REGARDING THE CITY'S PURCHASING POLICY; AMENDING AND RESTATING EXEMPTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.**

**BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF OCOEE, FLORIDA AS FOLLOWS:**

**SECTION ONE. Authority.** The City Commission of the City of Ocoee has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes, and Section C-8E of the Charter of the City of Ocoee.

**SECTION TWO. Amended and Restated City Purchasing Policy.** Chapter 21 of the Code of Ordinances of the City of Ocoee, Florida, is hereby amended to read as follows:

**CHAPTER 21**

**PURCHASING POLICY**

**SECTION 21.1 Definitions**

- A. **“Commodity”** means any of the various supplies, materials, goods, merchandise, equipment, and other personal property.
- B. **“Invitation to Bid” (ITB)** refers to the formal solicitation of two or more competitive sealed bids. The ITB is used when the City is capable of specifically defining the scope of work for which a commodity, contractual service, or construction service is required or when the City is capable of establishing precise specifications defining the actual commodity, group of commodities, material, or equipment required.
- C. **“Contractor” or “Vendor”** means a party who contracts to sell commodities, construction services, or contractual services to the City.
- D. **“Construction Services”** means the provision of services rendered by individuals and firms to provide labor and materials for the construction, renovation, repair, modification, or demolition of any public infrastructure, building, portion of a building, earthwork, roads, utilities, park, parking lot, public works or other

improvement to real property, in a manner consistent with the construction industry licensure and procurement laws of the State of Florida.

- E. **“Contract”** means a written agreement or purchase order between the City and a vendor detailing the legal responsibilities of both parties in the offer and acceptance of a specific act, usually for the procurement of goods, services, or construction for money or other considerations.
- F. **“Contractual Services”** means only those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consultants; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services.
- G. **“Emergency Purchase”** means those purchases occurring when certain conditions might adversely affect the life, health, safety, and welfare of City employees or its citizens, or when City property or equipment are endangered, or when it is necessary to maintain or restore vital services, to address non-compliance with Florida Statutes or other regulatory laws and permits, or situations which may cause a major adverse financial impact to the City should immediate action not be taken.
- H. **“Government Contracts”** includes contracts by other governmental agencies to include any political subdivision of the State of Florida or the United States, Special Districts, or special co-operative contracts provided such contracts are the result of a competitive bidding process, of which the City is extended the same terms and conditions, including price, of the contract.
- I. **“Procurement”** means purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition of such items, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- J. **“Professional Services”** means those services rendered by members of a recognized profession, supplied by a licensed or certified person, the performance of which is typically governed by State and Federal laws or professional practice standards.
- K. **“Purchasing Manual”** means the written purchasing procedures and practices which may be promulgated from time to time by the City Manager to implement and adhere to this Chapter.
- L. **“Purchase Requisition”** is a request for a PO to be issued and is required for all items that cannot be purchased using the City’s Purchasing Card.
- M. **“Purchase Order” (PO)** is a signed, numbered document authorizing an employee to purchase goods or services. PO’s are the result of the authorized Purchase Requisition.
- N. **“Purchasing Card”** means a Visa or Mastercard issued to designated employees to be used in compliance with this Chapter and the City’s Purchasing Card Policies and Procedures.

- O. **“Quotation” or “Quote”** is an informal written or verbal price proposal for a commodity or contractual service as stated by the vendor to be used to determine the correct price for purchase.
- P. **“Request for Proposals” (RFP)** refers to the formal solicitation of two or more competitive sealed proposals. The RFP is used when the City cannot specifically define the scope of work for which the contractual service, commodity, or construction is required. The City is requesting that a qualified respondent propose a commodity, contractual service, construction, material, or equipment to meet the specifications of the solicitation document. Each RFP requires a selection committee to score the evaluation criteria, which includes price.
- Q. **“Request for Qualifications” (RFQ)** refers to the formal solicitation of qualification statements for the procurement of professional services and other services requesting qualifications of firms only, and does not consider price in the ranking of firms. Each RFQ requires a selection committee to score the evaluation criteria.

### **SECTION 21.2 Establishing Purchasing Function**

There is hereby established a Purchasing Function within the Finance Department of the City. The Purchasing Agent shall be a budgeted position and shall serve as the central procurement officer of the City.

### **SECTION 21.3 Authority**

Subject to compliance with this Chapter and the City’s Purchasing Manual, the Purchasing Agent or designee is hereby granted authority to purchase or contract for all commodities and contractual services required by the City or other agencies under cooperative purchasing agreements.

### **SECTION 21.4 Procurement Thresholds**

Pursuant to Section 166.241(2), Florida Statutes, the adopted budget must regulate expenditures of the municipality, and an officer of a municipal government may not expend or contract for expenditures in any fiscal year except pursuant to the adopted budget. Unless otherwise provided by Florida Law or other provisions of the Code or waived as provided in this Chapter, all purchases by the City of commodities, contractual services, and construction services shall be processed and approved in accordance with the following procurement thresholds:

| <b>Level</b> | <b>Dollar Threshold</b>  | <b>Method of Solicitation</b>  | <b>Authority to Approve</b>  |
|--------------|--|--|--|
| Level One    | Individual Item and/or Total Purchase less than \$5,000.00                           | One Verbal Quote, City's Purchasing Card should be used when possible. | Department Director or Designee  |
| Level Two    | Individual Item and/or Total Purchase \$5,000.00 and over and less than \$10,000.00  | Two Written Quotes   | Department Director or Designee (Requires City Commission approval for capital items if amount exceeds budgeted amount or has been changed from original budget) |
| Level Three  | Individual Item and/or Total Purchase \$10,000.00 and over and less than \$25,000.00 | Three Written Quotes   | Purchasing Agent (Requires City Commission approval for capital items if amount exceeds budgeted amount or has been changed from original budget)                |

|            |  |                      |   |
|------------|--|----------------------|---|
| Level Four | Individual Item and/or<br>Total Purchase<br>\$25,000.00 and over<br>and less than<br>\$50,000.00 | Three Written Quotes | City Manager<br>(Requires award<br>or rejection by<br>the City<br>Commission if<br>the purchase<br>exceeds the<br>original<br>budgeted dollar<br>amount, or has<br>been changed<br>from original<br>budget) |
| Level Five | Individual Item And/or<br>Total Purchase<br>\$50,000.00 and over                                 | Formal Solicitation  | City<br>Commission  |

**SECTION 21.5 Exceptions to Procurement Thresholds**

When it is determined to be in the best interest of the City, the procurement thresholds contained in Section 21.4 above may be waived on a case-by-case basis. The authority to waive the procurement thresholds is as follows:

- A. The Purchasing Agent may waive the minimum standards for any commodity or contractual service which is less than \$25,000.00 in value. In such case, the Purchasing Agent shall attach a written explanation for waiver to the purchase order.
- B. The City Manager may waive the minimum standards for any commodity or contractual service which is over \$25,000.00 and less than \$50,000.00 in value. In such case, the City Manager or designee shall file a written explanation for waiver with the Purchasing Agent.
- C. The City Commission may waive the minimum standards for any commodity or contractual service in excess of \$50,000.00.

**SECTION 21.6 Emergency Purchases**

- A. The Department Director may make Emergency Purchases in accordance to the Authority to Approve provisions of the Procurement Thresholds set forth in Section 21.4, and in accordance with emergency purchasing procedures set forth in the Purchasing Manual. A summary report of all emergency purchases shall be submitted to the City Manager on a monthly basis.

- B. Emergency purchases of \$50,000.00 or more will require that the City Manager or the Department Director inform the City Commission regarding the purchase and the nature of the emergency, by submitting a report, of all such emergency purchases at the next regularly scheduled City Commission meeting following the emergency.

**SECTION 21.7 Procedures and Practices**

- A. The City Manager is hereby directed to establish a system, or amend the existing system, of uniform procurement procedures and practices to implement this Chapter. The purchasing procedures, as established by the City Manager above, are detailed as part of the Purchasing Manual.
- B. The adoption of a Purchasing Policy shall be made by City Ordinance.
- C. According to the City Charter, the Mayor and City Clerk shall execute all contracts. As set forth in Section 21.4, the purchase of commodities and contractual services with a value less than \$50,000.00 do not require City Commission approval. If a contract is required in connection with such a purchase, then following compliance with Section 21.4, Procurement Thresholds, the Mayor and City Clerk shall execute all such contracts.
- D. Violations: The following actions shall be considered Procurement Violations: Purchases made that are not in compliance with the Procurement Thresholds stated at Section 21.4; splitting a purchase or purchases to circumvent the Procurement Thresholds provided herein; purchases made from merchants that create a Conflict of Interest as this term is defined herein, (including but not limited to authorizing purchases from a company where the employee or the employee's relative has a financial interest); purchases from companies that are not City vendors; inadequate record keeping relating to purchases; and/or failure to properly document purchases.
- E. Conflict of Interest for City Officers and Employees engaged in the selection, award, and administration of City contracts, including contracts supported by a State or Federal award or funding, shall be governed by City Charter Chapter C-56, Personal Financial Interest; Section 3.01, Policy of the City; Section 4.01, Conflict of Interest, City Personnel Rules and Regulations; and Part III, Chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees.
- F. Failure to comply with the Purchasing Ordinance or Purchasing Manual is a group I or group II offense as defined in the Personnel Rules and Regulations, and may result in removal of the employee's procurement privileges and other disciplinary actions, up to and including termination, as detailed in the Personnel Rules and Regulations.

**G. Federal Grants:** All procurements by Federal Grant recipients and sub-recipients shall comply with the provisions of 2 C.F.R. Section 200.317 – 326. All procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of 2 C.F.R. Section 200.317 – 326.

In the event of a conflict between the City’s Purchasing Policy, codified at Chapter 21 of the City’s Code of Ordinances, and Federal Code, the more restrictive rule shall prevail.

### **SECTION 21.8 Exemptions**

A. The following commodities and contractual services are excluded from the competitive requirements of Section 21.4; however, the “Authority to Approve” provision of Section 21.4 is applicable to such procurements:

- (1) APPRAISAL SERVICES
- (2) CATERING/FOOD
- (3) COLLECTIVE BARGAINING AGREEMENTS
- (4) DUES
- (5) EMPLOYEE SCREENING SERVICES INCLUDING MEDICAL
- (6) ENTERTAINMENT
- (7) FINANCIAL SERVICES
- (8) FREELANCE SERVICES
- (9) LAND PURCHASES
- (10) LEGAL ADVERTISING
- (11) LEGAL SERVICES
- (12) POSTAGE/SHIPPING
- (13) TEMPORARY EMPLOYMENT CONTRACTS
- (14) TRAVEL/TRAINING
- (15) UTILITIES
- (16) VETERINARIAN SERVICES

B. Construction Management and construction program management (to the extent authorized by Section 255.103, Florida Statutes), architectural, engineering, landscape architectural, surveying and mapping services, design criteria professionals, or design-builder services shall be procured in accordance with the requirements of Florida’s Consultant’s Competitive Negotiation Act (CCNA) as set forth in Section 287.055, Florida Statutes, and are excluded from the competitive requirements of Section 21.4.

C. Professional Auditing Services shall be procured in accordance with the requirements of Section 218.391, Florida Statutes, and are excluded from the competitive requirements of Section 21.4. Section 218.391 is short-titled “Auditor Selection Procedures”.

D. Group Insurance for Employees and Public Officers shall be procured in accordance with the requirements of Section 112.08, Florida Statutes, and are excluded from the competitive requirements of Section 21.4. Chapter 112.08 is short-titled "Group insurance for public officers, employees, and certain volunteers; physical examinations."

### **SECTION 21.9 Bid Protest Procedures**

All Bid Protests shall be submitted to the Purchasing Agent in the following manner:

1. A Bidder **shall** file a written bid protest under this Article or be barred any relief; oral protests shall not be acknowledged.
2. A bid protest **shall** be limited to the following grounds: (a) issues arising from the procurement provisions of the Project Manual, its addenda, and other bidding documents; and/or (b) applicable federal, state, or local law. No bid protest may be based upon questions concerning the design documents (drawings and specifications). The Bidder shall clarify all questions concerning the design documents of the project prior to submitting its bid.
3. The content of the bid protest **shall** fully state the factual and legal grounds for the protest and the legal basis for the relief requested.
4. The bid protest **shall** be filed with the Purchasing Agent not later than five (5) calendar days after the posting of the notice of intent to award or recommendation of award by staff, whichever is earlier.
5. The Purchasing Agent, on behalf of the City, shall make a determination of the merits of the protest not later than five (5) business days after receipt of the protest. If the City denies the protest, the City may proceed with award of the contract unless enjoined by order of a court of competent jurisdiction.

**SECTION THREE. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereto.

**SECTION FOUR. Codification.** It is the intention of the City Commission of the City that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the



City; and that sections of this ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "chapter," "section," "article," or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and the correction of typographical errors which do not affect the intent maybe authorized by the City Manager, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

**SECTION FIVE. Effective Date.** This Ordinance shall become effective upon passage and adoption.

PASSED AND ADOPTED this 1<sup>st</sup> day of August, 2017.

**APPROVED:**

**ATTEST:**

**CITY OF OCOEE, FLORIDA**

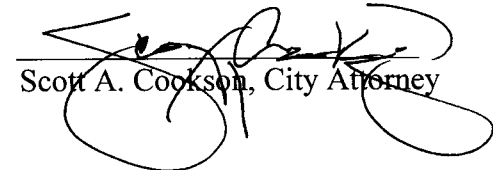
  
\_\_\_\_\_  
Melanie Sibbitt, City Clerk

  
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Rusty Johnson, Mayor

ADVERTISED July 20, 2017  
READ FIRST TIME  
June 18, 2017  
READ SECOND TIME AND ADOPTED  
August 1, 2017  
UNDER AGENDA ITEM NO. 10

**FOR USE AND RELIANCE ONLY  
BY THE CITY OF OCOEE,  
APPROVED AS TO FORM AND  
LEGALITY, THIS 1<sup>st</sup> day  
of August, 2017**

**SHUFFIELD, LOWMAN & WILSON, P.A.**

BY:   
\_\_\_\_\_  
Scott A. Cookson, City Attorney