



TOWN OF HIGHLAND BEACH PROPOSED ORDINANCE

AN ORDINANCE OF THE TOWN OF HIGHLAND BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES, AT CHAPTER 33 “ACQUISITION OF GOODS AND SERVICES,” SECTION 33-2 “METHODS OF ACQUISITION”; AMENDING SECTION 33-3 “TOWN COMMISSION APPROVAL”; AND FOR OTHER PURPOSES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Highland Beach, Florida (the “Town”), is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission wishes to update Chapter 33 “Acquisition of Goods and Services” to be consistent with updates made to the Town’s Purchasing Policy and Procedures; and

WHEREAS, it has been determined that this ordinance serves a public purpose and is in the best interest of the public health, safety, and welfare of the Town of Highland Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF HIGHLAND BEACH, FLORIDA, AS FOLLOWS:

Section 1. The foregoing facts and recitations contained in the preamble to this Ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2. The Town of Highland Beach Code of Ordinances, is hereby amended at Chapter 33, “Acquisition of Goods and Services,” to read as follows:

Chapter 33 – ACQUISITION OF GOODS AND SERVICES

* * *

Sec. 33-2. – Methods of acquisition.

(a) *Sealed competitive method.* Acquisitions of or contracts for non-real property, goods or services where the expenditure by the town (including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be ~~twenty-five thousand dollars (\$25,000.00)~~ or greater than fifty thousand dollars (\$50,000.00) shall be subject to a sealed competitive method, unless the town utilizes one of the methods that

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is exempt from the sealed competitive method or from obtaining quotes, as provided in subsection 33-2(c).

(1) *Competitive bids.* Sealed competitive bids are utilized where price, responsiveness, and responsibility are the sole determining factors.

(2) *Requests for proposals, requests for qualifications, requests for letters of interest.* Requests for proposals, requests for qualifications, and requests for letters of interest are utilized where price, responsiveness, and responsibility are not the sole determining factors. The town manager may appoint a selection committee to review the submissions received by the town in response to requests for proposals, requests for qualifications, and requests for letters of interest and make a recommendation to the town commission. The selection committee shall terminate upon the award of the contract, or such other time as determined by the town commission.

(3) *Submissions.* It shall be the sole responsibility of the bidder, proposer or responder to have the bid, proposal or response delivered before the specified closing date and time. Bids, proposals or responses received after the closing date and time shall not be considered and shall be returned unopened. The clock in the town clerk's office shall govern. All bids, proposals and responses submitted pursuant to a sealed competitive method shall remain sealed until they are opened publicly on the date and time and location stated in the notice to bidders, proposers or responders, or as may be amended by addendum.

(4) *Town's reservation of rights.* The town may utilize a sealed competitive method for any acquisition that the town deems appropriate regardless of the estimated cost of the acquisition. Until final award of contract, the town reserves the right to waive any informality or irregularity and to reject all bids, proposals and responses, with or without cause.

(b) *Purchasing policy.* Acquisitions equal to or less than fifty thousand dollars (\$50,000.00) ~~under twenty-five thousand dollars (\$25,000.00)~~ shall be governed by the town's purchasing policy.

(c) *Exemptions from purchasing by the sealed competitive method or by obtaining a written quote.*

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(1) *Professional services.* Except as otherwise provided for in Florida law, contracts for professional services (which include but is not limited to services provided by architects, engineers, surveyors, attorneys, accountants, actuaries, lobbyists and financial advisors) may be made or entered into by the town manager without utilizing a sealed competitive method or obtaining written quotes. Acquisitions of professional services where the expenditure by the town (including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be ~~twenty five thousand dollars (\$25,000.00) or~~ greater than fifty thousand dollars (\$50,000.00) shall be subject to approval by the town commission.

(2) *Specialty goods and services.* Acquisitions of or contracts for specialty goods and services (including but not limited to performing artists, artwork, special events, entertainment, and food and beverage) may be made or entered into by the town manager without utilizing a sealed competitive method or obtaining written quotes. Acquisitions of specialty goods and services, where the expenditure by the town is estimated to be ~~twenty five thousand dollars (\$25,000) or~~ greater than fifty thousand dollars (\$50,000.00); shall be subject to approval by the town commission.

(3) *Emergency acquisitions.* The town manager may acquire or contract for non-real property, goods, or services required in contemplation of, preparation for, or during an emergency without utilizing a sealed competitive method or obtaining written quotes regardless of the amount. Emergency acquisitions of non-real property, goods or services where the expenditure by the town is estimated to be ~~twenty five thousand dollars (\$25,000.00) or~~ greater than fifty thousand dollars (\$50,000.00) shall be subject to ratification by the town commission as soon as practicable.

(4) *Sole source and town standard.*

a. *Sole source.* The town may acquire or contract for non-real property, goods or services that are available to the town from only one source without utilizing the sealed competitive method or obtaining written quotes. Sole source acquisitions where the expenditure by the town

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(including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be ~~twenty-five thousand dollars (\$25,000.00)~~ or greater than fifty thousand dollars (\$50,000.00) shall be subject to approval by the town commission.

b. *Town standard.* Where the town has determined that a particular style, brand, make, or model is the only type that meets the town's requirements for performance, consistency, compatibility or other salient characteristics, and such determination has resulted in there being only one source available to the town, the town may acquire or contract for such goods without utilizing a sealed competitive method or obtaining written quotes. Town standard acquisitions where the expenditure by the town (including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be ~~twenty-five thousand dollars (\$25,000.00)~~ or greater than fifty thousand dollars (\$50,000.00) shall be subject to approval by the town commission.

(5) *Utilization of other governmental entities' contracts.*

a. The town may acquire or contract for non-real property, goods or services without utilizing a sealed competitive method or obtaining written quotes where the desired goods or services are the subject of a contract with the state, its political subdivisions or other local governmental entities in the state, with associations in Florida affiliated with state and/or local governmental entities or departments (such as the Florida Sheriffs' Association and the Florida Fire Chiefs' Association) or with the United States government or national cooperatives, provided that the contract is based strictly on competitive bidding and not on any preference, and provided that the form of the contract is acceptable to the town attorney. Acquisitions utilizing other governmental entities' contracts where the expenditure by the town (including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be ~~twenty-five thousand dollars (\$25,000.00)~~ or greater than

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fifty thousand dollars (\$50,000.00) shall be subject to approval by the town commission.

b. Utilization of other government entities' contracts shall only be permitted during the term of the other governmental entity's contract or for one year from the date the other governmental entity awards the bid, whichever is longer.

c. If the town desires to utilize another governmental entity's contract, the town shall require the vendor to certify that the price or rate represents the lowest price or rate for the non-real property, goods or services of any contract between the vendor and any other governmental entity within the state.

(6) *Cooperative acquisitions.* The town may acquire or contract for non-real property, goods or services without utilizing a sealed competitive method or obtaining written quotes where the town participates in joint procurement of non-real property, goods or services with other public entities within the state, including, but not limited to acquisitions made pursuant to interlocal agreements entered into with other governmental entities in accordance with F.S. Ch. 163. Cooperative acquisitions where the expenditure by the town (including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be ~~twenty five thousand dollars (\$25,000.00) or greater~~ than fifty thousand dollars (\$50,000.00) shall be subject to approval by the town commission.

(7) *Utilities.* Water, sewer, gas, electrical, and other utility services may be acquired without utilizing a sealed competitive method or obtaining written quotes and without town commission approval.

(8) *Resale.* Food, beverages and merchandise purchased for resale, may be acquired without utilizing a sealed competitive method or obtaining written quotes and without town commission approval.

(9) *Employee benefits and health services.* Employee benefits and health related services may be procured/renewed directly through a negotiating process

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conducted by town staff and/or an expert in the field, or to maintain continuity of employee-health records, and is not subject to competitive procurement methods.

(10) *Property, casualty, workers compensation, liability, automobile insurance.* Insurance may be procured/renewed directly through a negotiating process conducted by town staff and/or an expert in the field, or to maintain continuity of insurance records, and is not subject to competitive procurement methods.

(11) *Best interest acquisitions.* The town may acquire or contract for non-real property, goods or services without utilizing a sealed competitive method or obtaining written quotes where the town commission declares by at least a four-fifths ($\frac{4}{5}$) affirmative vote that the sealed competitive method or obtaining written quotes is not in the best interest of the town. The town commission shall make specific factual findings that support its determination, and such contracts shall be placed on the regular town commission agenda. This provision may not be used when the purchasing or procurement method is prescribed by state law, such as F.S. § 287.055 or 255.20, as amended.

Sec. 33-3. – Town commission approval.

(a) ~~Acquisitions of twenty-five thousand dollars (\$25,000.00) or greater~~ than fifty thousand dollars (\$50,000.00). ~~Except as otherwise set forth in the Code, Acquisitions~~ of or contracts for non-real property, goods or services where the expenditure by the town (including expenditures during renewal periods, but not expenditures relating to change orders) is estimated to be ~~twenty-five thousand dollars (\$25,000.00) or greater~~ than fifty thousand dollars (\$50,000.00) shall be subject to prior approval by the town commission; ~~except for emergency acquisitions, which are subject to subsequent ratification by the town commission pursuant to subsection 33-2(c)(3).~~

(b) *Multiple acquisitions from a vendor exceeding* ~~twenty-five~~ fifty *thousand dollars (\$25* 50,000.00) in any fiscal year. Acquisitions of or contracts for non-real property, goods or services from the same vendor exceeding the aggregate sum of ~~twenty-five~~ fifty thousand dollars (~~\$25~~ 50,000.00), per project, shall not be permitted from the same vendor

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during the course of any fiscal year, unless the acquisition is first approved by the town commission. This subsection shall not apply to utility acquisitions.

* * *

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Codification. Section 2 of the Ordinance may be made a part of the Town Code of Ordinances and may be re-numbered or re-lettered to accomplish such, and the word “ordinance” may be changed to “section,” “division,” or any other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption at second reading.

The foregoing Ordinance was moved by _____, seconded by _____ and upon being put to the vote, the vote was as follows:

VOTES:

YES NO

Mayor Natasha Moore
Vice Mayor David Stern
Commissioner Evalyn David
Commissioner Donald Peters
Commissioner Judith M. Goldberg

PASSED on first reading at the Regular Commission meeting held on this _____ day of _____, 2023.

The foregoing Ordinance was moved by _____, seconded by _____ and upon being put to the vote, the vote was as follows:

VOTES:

YES NO

Mayor Natasha Moore
Vice Mayor David Stern
Commissioner Evalyn David
Commissioner Donald Peters

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Commissioner Judith M. Goldberg

PASSED AND ADOPTED on second and final reading at the Regular Commission meeting held on this _____ day of _____, 2023.

ATTEST:

Natasha Moore, Mayor

**REVIEWED FOR LEGAL
SUFFICIENCY:**

Lanelda Gaskins, MMC
Town Clerk

Glen Torcivia, Town Attorney
Town of Highland Beach