

## PROCUREMENT AND PAYMENT DISPUTE RESOLUTION POLICY

1. **PURPOSE:** This section provides direction to staff, vendors, contractors, the public and other governmental agencies on how procurement will be conducted by the Clerk's Office. Procurements for the Clerk's Office shall be in compliance with Chapter 28, Florida Statutes, and shall be consistent with the purposes and intent of Chapters 255 and 287, Florida Statutes, and with Chapter 60A-1, Florida Administrative Code, and Section 218.76, Florida Statutes, unless otherwise specified in this policy and procedure.
2. **DIRECTIVE:** The expenditure of public funds for the procurement of commodities and services for the Clerk's Office requires that all employees participating in the procurement process:
  - 2.1 Be responsible for conducting the procurement process in an economical and expeditious manner.
  - 2.2. Be held to a high level of accountability for the expenditure of public funds.
  - 2.3. Be courteous and objective with vendor representatives.
  - 2.4. Develop clear, concise bid conditions and specifications.
  - 2.5. Keep competition fair and open.
  - 2.6. Remain free from obligations to vendors.
  - 2.7. Promptly resolve disputes.
3. **LEVELS OF AUTHORITY FOR PROCUREMENT**
  - 3.1. A Clerk's Authorization Request Form (CARF) is required for the following:
    - 3.1.1. Any request for commodities or services requiring the Clerk's signature.
    - 3.1.2. The purchase of hardware, or, the purchase, renewal or modification of software licenses, or any maintenance and support agreements.
    - 3.1.3. Any purchase of \$10,000 or more.
  - 3.2. Procurement with values up to \$4,999.99: At least two written quotes shall be obtained, when possible. Approval on the requisition is required by the Director.
  - 3.3. Procurement with values between \$5,000 - \$9,999.99: At least three written quotes shall be obtained, when possible. Approval on the requisition is required by the Chief Deputy or any IT Director.

- 3.4. Procurement with values between \$10,000 - \$34,999: At least three written quotes shall be obtained, when possible. Approval on the requisition is required by the Clerk or their designated representative.
- 3.5. Procurement with values \$35,000 and over: The sealed Request for Proposal (RFP) process shall be followed for obtaining commodities or services. Approval on the requisition is required by the Clerk or their designated representative.
- 3.6. A purchase divided into smaller purchases to circumvent this policy is strictly prohibited.

#### 4. CONTRACTS

- 4.1. Subject to Clerk approval with legal review and approval of contract terms, an active Florida State term contract or a contract negotiated by another Florida local government or purchasing cooperative can be used in lieu of competitive bidding.
  - 4.1.1. The commodity or service needed must be specifically stated within the scope of the contract awarded by the other entity and the contract must be active.
- 4.2. Department Contract Manager responsibilities:
  - 4.2.1. Ensure commodities or services needed are within the contract scope, the scope meets the requesting department's needs, and pricing is fair and reasonable.
  - 4.2.2. Ensure vendor compliance with all contract terms throughout the contract period and report any performance deficiencies or deviations from contract terms to the Contract Administrator.
  - 4.2.3. Ensure any proposed modification or change order is market and price competitive and does not materially change the original scope of work.
  - 4.2.4. For contract renewals, the Requesting Department must provide the following information to the Contract Administrator:
    - 4.2.4.1. A statement as to whether the Contractor's performance has been satisfactory.
    - 4.2.4.2. A statement that the current pricing has been reviewed to determine whether it remains fair and reasonable.
  - 4.2.5. If the Requesting Department does not recommend Contract renewal, the Department must contact the Contract Administrator at least 30 days

prior to the required termination time frame contained within the Contract (i.e., contract requires 60-days-notice to terminate, Requesting Department must contact the Contract Administrator at least 90 days prior to the desired termination date.) More time may be needed if a Request for Proposal/Request for Quotation is necessary to acquire a new vendor.

- 4.2.6. Submit all requests for copies of contract documents by outside parties (other governmental agencies, businesses, members of the public, etc.) to the Contract Administrator for Legal Counsel review to ensure confidential information is not disseminated.
  - 4.2.7. Confirm receipt of any contract-related commodities and/or services when delivered.
  - 4.2.8. Approve all invoices associated with the contract and initiate vendor disputes in a timely manner if appropriate.
  - 4.2.9. Initiate all correspondence with the Contractor with copy to Contract Administrator.
- 4.3. Contract Administrator's Responsibilities:
- 4.3.1. Review all contract and purchasing related documents with legal to ensure legal sufficiency with respect to form and compliance with applicable laws.
  - 4.3.2. Address contract issues and negotiate contract terms with contractors, under direction from Legal and in conjunction with the Department Contract Manager.
  - 4.3.3. Direct Department Contract Manager to terms and conditions in a contract in response to questions or concerns and/or refer to Legal for definition and description of contract terms and conditions.
  - 4.3.4. Present all CARFs and Contract documents to the Clerk for approval following legal review.
  - 4.3.5. Coordinate with Purchasing Department in the preparation and review of any formal procurement document.
  - 4.3.6. Manage the Clerk's Dispute Resolution process.

## 5. PROCUREMENT ADMINISTRATION

- 5.1. The Clerk's Purchasing Department shall provide an efficient and cost-effective method for procuring all commodities and services. Price lists for commodities and services, including local and state contract lists, are maintained to facilitate the procurement process.
- 5.2. The following categories of purchases will be utilized for the acquisition of commodities and services:
  - 5.2.1. Small Purchases: Small purchases are less than \$500.00 and not acquired through a blanket purchase order (typically office supplies).
  - 5.2.2. Blanket Purchase Orders: An arrangement under which the Clerk's Office contracts with a vendor to provide commodities or services on an as needed basis. Blanket POs define the contract term and the maximum amount of money which may be spent.
  - 5.2.3. Emergency Purchases: Purchases may be made under emergency provisions when it is determined that:
    - 5.2.3.1 Conditions exist which create a disruption of essential operations.
    - 5.2.3.2. Conditions exist which adversely affect safety, health, or security of people or property.
    - 5.2.3.3. Any other reasons proclaimed by the Clerk.
  - 5.2.4. Sole Source: A purchase order or contract may be awarded without bid, quote or solicitation when it is approved by the Clerk that:
    - 5.2.4.1. There is only one source/vendor for the required commodity or service.
    - 5.2.4.2. Competitive bidding is either not feasible or advantageous to the Clerk.
  - 5.2.5. Request for Quotation (RFQ): For purchases under \$35,000.00, a contract or purchase order may be entered into by obtaining at least three (3) competitive written quotations, unless waived by the Clerk.
  - 5.2.6. Request for Proposal (RFP): For a purchase in excess of \$35,000.00, a sealed bid process should be used, unless waived by the Clerk. A RFP shall be issued and published in a newspaper of general circulation and allow adequate public notice prior to the opening date.

## 6. P-CARD ADMINISTRATION

- 6.1. Authorized staff have been issued Procurement Cards (P-Cards). Various levels of procurement authority have been established through Clerk's Administration.
- 6.2. Up to \$5,000.00 per day may be purchased by each P-Card holder. The Clerk has set limitations regarding use of a P-Card to purchase equipment; all equipment purchases are to be procured through the requisition/purchase order process to ensure Fixed Assets receives proper notification of a capital expenditure.
- 6.3. Disaster Preparedness/Recovery - Use of P-Cards under these conditions will be at the direction of the Clerk.

## 7. DISPUTE RESOLUTION PRE-DISPUTE PROCESS

- 7.1. Receipt of invoices - Any invoice or request for payment ("invoice") received by a department shall immediately be forwarded to Clerk's Accounting. Clerk's Accounting shall immediately date stamp any paper invoice on the first page to show the date of receipt. Clerk's Accounting shall immediately forward a copy of the invoice to the department that utilizes the vendor to review the invoice and determine if it is in proper form for payment.
- 7.2. Prompt review of invoices - Within five (5) calendar days from date of receipt, each invoice must be reviewed to determine that the information contained in the invoice is in compliance with the terms of payment or other material terms of the contract or purchase order that governs the vendor's right to be paid.
- 7.3. Payment of invoices that are not in dispute - If the invoice reviewed is in compliance with the terms of the contract or purchase order that governs payment, the invoice shall be noted as "ok" and forwarded to Clerk's Accounting for payment.
- 7.4. Improper Invoice - If a vendor's invoice is not in compliance with the terms of payment or other material terms of the contract or purchase order that governs the vendor's right of payment, each part of the invoice that is not in compliance with the terms of the appropriate contract or purchase order shall be noted along with the corrective action required to bring the invoice into compliance with the terms of the appropriate contract or purchase order. This information shall be immediately sent to the Clerk's Contract Administrator. If the disputed amount of the invoice is less than two hundred and fifty (\$250.00) dollars, the department may resolve the dispute directly with the vendor and provide written notice of the resolution to the Clerk's Contract Administrator. In such cases this Vendor Payment Dispute Resolution Procedure shall be suspended.

- 7.5. Notice to vendor of determination that an invoice is not proper and corrective action needed - On or before ten (10) calendar days following the date of receipt of the invoice (including the date of receipt), the Clerk's Contract Administrator shall provide notice to the vendor identifying each part of the invoice that is not in compliance with the contract or purchase order and the corrective action that is required to bring the invoice into compliance with the contract or purchase order. Notice shall be sent to the vendor by United States mail and/or by e-mail, read receipt requested, if available. The notice shall require the vendor to respond in writing within ten (10) calendar days from the date sent either acknowledging or disputing the corrective action needed.
- 7.6. Partial payment of improper invoice - If any part of an invoice amount is determined to be improper and the corrective action that is required does not affect payment of the proper part of the invoice, then within ten (10) days of receipt of the invoice, the invoice should be forwarded to Clerk's Accounting for partial payment of that amount in the invoice that is determined to be proper.
- 7.7. Receipt of notice from vendor acknowledging corrective action will be taken - Notice from a vendor acknowledging that corrective action will be taken shall be date stamped. When a corrected invoice is received, the pre-dispute process in paragraphs 1 through 6 above shall be followed.
- 7.8. Receipt of notice from vendor disputing the Clerk's determination that the invoice is improper. When a vendor sends notice that the vendor disputes the Clerk's determination that the invoice is improper and requires corrective action, that notice shall be date stamped on the first page of the document to show the date of receipt and forwarded to the Clerk's Contract Administrator and the dispute resolution procedure shall commence.

## 8. DISPUTE RESOLUTION PROCEDURE

- 8.1. Notice to vendor that the Dispute Resolution Procedure has commenced - The Clerk's Contract Administrator shall acknowledge receipt of the vendor's notice of dispute and provide the vendor with a copy of the Clerk's dispute resolution procedure by United States mail and/or by e-mail, read receipt requested, if available.
- 8.2. Convening an independent panel to investigate the disputed invoice or request for payment - The Clerk or her designee shall appoint a panel of two or more members of the senior management staff to investigate the disputed invoice. The panel shall act independently and consider the perspectives of the Clerk's Office and the vendor and make a finding and recommendation to the Clerk for resolution of the dispute. The panel shall select one member to act as moderator. The Clerk's Contract Administrator shall provide any clerical support needed by the panel.

The panel shall initially consider the information provided by Clerk staff in the notice to vendor and the vendor's response together with the terms of the contract or purchase order. As part of the investigation, the panel may request the Clerk's legal counsel for advice regarding any legal interpretation of the contract or purchase order. The panel may also interview any member of Clerk staff that participated in the determination that the invoice was improper.

- 8.3. Vendor's right to present information to the investigation panel - The notice to the vendor regarding the Clerk's dispute resolution process shall inform the vendor of the vendor's right to present additional information to the panel within thirty (30) calendar days from the receipt date of the invoice that is disputed. Any additional written information provided by the vendor must be received by the panel within thirty-five (35) days after the receipt date of the invoice that is disputed if the vendor does not appear before the panel as provided below. The panel has no obligation to consider any written information from the vendor that is not received timely.
- 8.4. Vendor's right to appear before the investigation panel in person or by phone conference - The notice to the vendor regarding the Clerk's dispute resolution process shall inform the vendor of the vendor's right to appear before the panel in person or by phone conference at a date and time to be determined by the panel, which is within forty (40) days after the date the Clerk received the invoice that is disputed. If the vendor exercises its right to appeal before the panel, the Clerk's staff that determined non-compliance of the invoice may also appear before the panel. The presentation of each side shall not exceed thirty (30) minutes. Either side has the right to transcribe the entire proceeding, using a certified court reporter. The cost of the transcription shall be paid by the party seeking the transcription. If the proceeding is transcribed by either party, the other party is entitled to obtain a copy of the transcript upon payment of the cost of the copy to the certified court reporter.
- 8.5. Vendor's right to propose compromise to resolve the disputed invoice or request for payment - It is the policy of the Clerk to consider a resolution of any conflict by compromise. Therefore, there is nothing in this dispute resolution procedure that prohibits the vendor or Clerk staff from negotiations that lead to a proposed compromise of the disputed invoice. However, any such proposed compromise must be presented to the Clerk for approval before the fiftieth (50th) day after the date the Clerk received the disputed invoice.
- 8.6. Investigation panel to make written findings and recommendations to the Clerk regarding payment or withholding payment of the disputed amount - After the panel has completed its investigation, the panel shall provide written findings and recommendations to the Clerk regarding the payment or withholding of some or the entire disputed amount of the invoice, including any conditions that the panel deems appropriate. The written findings and recommendations shall be delivered to the Clerk no later than the fifty-fifth (55th) day after the date the disputed invoice was received.

- 8.7 Clerk's written resolution of the disputed invoice and notice of rights to appeal - On or before the sixtieth (60th) day after the date the disputed invoice was received, the Clerk shall notify the vendor in writing of the Clerk's decision regarding the disputed invoice and that the decision is a final action. If the Clerk decides in favor of Clerk's staff, then the written decision shall inform the vendor of its right to appeal pursuant to section 218.76, Florida Statutes (2010). If the Clerk's decision is in favor of the vendor, the disputed amount of the invoice shall be paid to the vendor within fifteen (15) days after the Clerk's decision is rendered.
- 8.8 Written notice to vendor of Clerk's final determination of the disputed invoice - The Clerk's decision shall be sent to the vendor by United States mail and/or e-mail, read receipt requested, if available.