

**ORDINANCE NO. 2007-15**

AN ORDINANCE OF THE TOWN OF GRANT-VALKARIA , BREVARD COUNTY, FLORIDA; RELATING TO THE PURCHASE OF SERVICES AND SUPPLIES AND THE DISPOSITION OF TOWN PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

**WITNESSETH:**

**WHEREAS**, pursuant to the authority granted to the Town Council in the Town Charter, the Town Council has determined that the Town needs procedures concerning the purchase of services and supplies and the disposition of property; and

**WHEREAS**, the Town Council finds that adoption of this Ordinance is in the best interest of the citizens of the Town of Grant-Valkaria; and

**WHEREAS**, the Town Council in providing for the health, safety and welfare of its citizens, has determined that is necessary to adopt an ordinance concerning the purchase of services and supplies and the disposition of property.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GRANT-VALKARIA, BREVARD COUNTY, FLORIDA, AS FOLLOWS:**

“PURCHASING

SECTION 1.

Sec. 1-1. Definitions.

The following terms, phrases, words and their derivations shall have the meaning given herein, when not inconsistent with the context.

*Professional services* shall mean any service performed by a professional. A professional is one performing any vocation requiring a four-year college degree as a prerequisite to licensing by the State of Florida. The four-year degree is not required to be in the field of study specifically related to the vocation in question. A professional service includes, but is not limited to, services performed by a certified public accountant, an attorney, or a doctor. The positions of financial advisor or consultant, or bond underwriter shall also be included within this definition.

*Purchasing administrator* shall mean the Town Administrator or designee.

*Services* shall mean the furnishing of labor, time, or effort by a contractor.

*Supplies* shall mean and include all supplies, materials and equipment.

*Using agency* shall mean any department or division, agency, commission, board, bureau, committee, institution, authority, or other establishment or official of this town, which utilizes any supplies, services, or any other item procured under this Ordinance.

Sec. 2-1. Establishment of a division of central purchasing; general purpose.

(a) There is hereby established a central purchasing program. The central purchasing program shall be administered by the purchasing administrator who shall function as the town's purchasing agent. The purpose of the division of purchasing is to promote efficiency and economy; to effect coordination in the purchase of commodities for the town; and to provide overall direction of contractual services, procurement policies, rules, and procedures.

(b) The purchasing administrator shall develop and maintain a purchasing manual which shall provide for rules, regulations, and procedures for the internal management and operation of the division of purchasing and such rules and regulations as shall be prescribed by the town administrator and the town council.

(c) Except as otherwise provided herein, the purchasing administrator shall supervise the procurement of all supplies, services, or other items as needed by the town; exercise supervision and control over inventories of supply belonging to the town; sell, trade, donate, destroy, transfer or otherwise dispose of surplus property belonging to the town; and determine the lowest or highest responsible and responsive bidder/proposer, as the case may be.

(d) All manuals, programs, rules, regulations and procedures required to be developed pursuant to this ordinance shall be finalized and presented to the Town Council for approval no later than 180 days from the effective date of this ordinance.

Sec. 3-1. Jurisdiction on public improvement or professional service contracts.

(a) The solicitation and award of contracts involving public works or public construction and improvements shall be administered by the purchasing administrator and when such a department is created, the engineering department. Public works and public construction and improvement contract solicitation and award shall be specifically subject to the procedures set forth herein, and subject to section 255.20,

Florida Statutes, as amended from time to time and to the extent that the public work or construction and improvement meets the cost thresholds in those statutes. The solicitation and award of contracts involving public works or public construction and improvements are otherwise exempt from this article.

(b) The solicitation and consummation of contracts involving leases by the town for all grounds, buildings, or other space required by using town agencies shall be administered by the town administrator or his designee. Contract consummation of leases by the town for all grounds, buildings, or other space required by using town agencies shall be specifically approved by the Town Council.

(c) Contracts for professional services shall be exempt from this article relating to purchasing for such services provided by the Florida statutes. The purchase of professional services subject to the Consultants' Competitive Negotiation Act, section 287.055, Florida Statutes, shall be awarded pursuant to the provisions of that enactment, as amended from time to time. The purchase of professional services subject to section 11.45, Florida Statutes, shall be awarded pursuant to the provisions of that enactment, as amended from time to time. Except as otherwise provided in this subsection, the purchase of professional services up to and including ten thousand dollars (\$10,000.00) may be awarded by the town administrator. Except as otherwise provided in this subsection, the purchase of professional services for in excess of ten thousand dollars (\$10,000.00) shall be awarded by town council.

Sec. 4-1. Unauthorized purchases.

Except as herein provided, it shall be unlawful for any using agency to order the purchase of any services, supplies, or commodities within the purview of this article other than through the purchasing division. The town shall not approve and shall not be bound by any purchase order or contract made contrary to the provisions of this article.

Sec. 5-1. Encumbrance of funds.

Except in cases of emergency, neither the purchasing administrator nor a using agency shall issue any purchase order for delivery if it has been determined that there is an insufficient unencumbered appropriation balance, in excess of unpaid obligations, to defray the amount of such order in the account of the using agency.

Sec. 6-1. Formal bids.

- (a) *Generally.* All supplies and services, except as otherwise provided herein, when the estimated cost shall exceed seven thousand five hundred dollars (\$7,500.00), shall be purchased after competitive formal bidding (sealed bids) and award to the lowest and best responsible and responsive bidder. Town council shall have authority to waive formal bid procedures in cases where it deems it advisable to do so, under the terms and conditions provided for in this article.
- (b) *Notice inviting bids.* Invitations to bid shall be subject to the following:
- (1) *Newspaper.* The notice inviting bids shall be published once in the legal section of a newspaper of general circulation in the city and at least five (5) calendar days preceding the last day set for the receipt of proposals. The notice shall include a general description of the supplies to be purchased or sold or services to be performed and shall state where bid invitations and specifications may be secured and the time and place for opening bids.
  - (2) *Bidders' list.* Sealed bids shall also be solicited from responsible prospective suppliers from a bidders' list maintained in the purchasing division. Invitations sent to the vendors on the bidders' list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.
  - (3) *Bulletin board.* All pending purchases or sales shall also be advertised by a notice posted on a public bulletin board in town hall.
- (c) *Bid deposits.* When deemed necessary by the purchasing division, a bid deposit (surety) and/or performance bond may be prescribed in an invitation to bid; however, a performance bond may be required by the town council in any case where the contract price exceeds twenty-five thousand dollars (\$25,000.00). Unsuccessful bidders shall be entitled to a return of surety where the town has required such. A successful bidder shall forfeit any required surety upon failure on his part to enter into a contract after town approval or to meet other requirements as set forth in the invitation to bid.
- (d) *Bid-opening.*
- (1) *Sealed.* Bids shall be submitted sealed to the purchasing division and shall be identified as a bid on the envelope.
  - (2) *Opening.* Bids shall be opened in public at the time and place stated in the public notice.
  - (3) *Tabulation.* A tabulation of all bids received shall be available for public inspection.

- (e) *Award.* The provisions of sections 8-1 and 14-1 shall apply.
- (f) *Rejection of bids.* The town shall reserve the right to reject all bids or parts of all bids for one or more supplies or services included in the proposed specifications. A statement of the reason for the rejection shall be prepared and made a part of the record.
- (g) *Correction or withdrawal of bids; cancellation of awards.* Correction before bid opening or withdrawal of inadvertently erroneous bids before or after bid opening or cancellation of awards or contracts based on bid mistakes may be permitted. Mistakes discovered before bid opening may be modified or withdrawn by written notice from the bidder and received in the office designated in the invitation to bid prior to the time set for bid opening. After bid opening, corrections or clarifications in bids shall be permitted only to the extent that the corrections do not materially affect the terms, conditions and specifications and may be subject to the approval of the town attorney.
- (h) *Late bids.* Bids received and clocked in after the hour and date specified in the proposal form will not be opened.
- (i) *Contracts.* Supplies and services to be provided over a period of time may be a subject of a formal contract signed by the successful bidder, the purchasing administrator, and/or the town administrator.

Sec.7-1. Waiver of formal bid requirements.

When the estimated cost of supplies and/or services exceeds ten thousand dollars (\$10,000.00), a contract for same may be awarded to the lowest and best responsible bidder without formal contract and without formal bidding, as specifically provided below:

- (1) *Purchase from governmental entity.* The town may buy from another governmental entity contracts or bids whereby such contract or formal bid followed formal bid procedures of sealed written bids, public opening, and legal advertising.
- (2) *Sole source procurement.* A contract may be made without competition when the using agency certifies to the purchasing administrator in writing that after conducting a good faith review of available sources, that there is only one source

for the required item or service, or by negotiation where the procurement by competitive procedure is not feasible or practicable.

- (3) *Surplus property.* The town administrator may authorize the purchasing administrator to purchase surplus property as donated by the State Department of General Services, Division of Surplus Property, as authorized by Florida Statutes.

#### Sec.8-1. Formal proposals.

When the town administrator determines that the use of competitive sealed bidding is either not practicable or advantageous to the town, an award or a contract may be entered into by use of the competitive sealed proposals method.

- (1) *Request for proposals.* Proposals shall be solicited through a request for proposals (RFP).
- (2) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in this article.
- (3) *Quotation of fees.* The town shall require interested persons to submit a quotation of their proposed fees or prices for the performance or delivery of their proposed services or goods, unless such interested persons are prohibited by law.
- (4) *Evaluation factors.* The request for proposals shall state the relative importance of price and other evaluation factors.
- (5) *Discussion with responsible offerors; revisions to proposals.* For the purpose of clarification and to assure a full understanding of and conformance to the solicitation requirements, discussions shall be conducted with at least three (3) of the best qualified responsible offerors, who submit proposals, who are determined to be reasonably successful in being selected for award. Offerors shall be provided an opportunity to discuss and revise proposals. Revisions may be permitted through negotiations after submission and prior to award for the purpose of obtaining the best and final offer.
- (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. Approval of final award will be governed by the total estimated cost and provisions set forth in this article. No other factors or criteria shall be used in the evaluation.

#### Sec.9-1. Contracts.

All contracts for purchase of supplies or performance of services for the town which exceed ten thousand dollars (\$10,000.00), except for contracts governed by the Consultant's

Competitive Negotiations Act (CCNA), shall be awarded in accordance with the provisions of the formal bids and formal proposals. All contracts which do not exceed ten thousand dollars (\$10,000.00) may be approved by the purchasing administrator without competitive bidding or negotiation. If the town has an existing contract for the performance of such services, the contract may be renewed annually, provided that the services rendered have been satisfactory.

Sec.10-1. Cooperative purchasing.

The purchasing administrator shall have the authority to join with other units of government in cooperative purchasing plans when the best interest of the town would be served.

Sec.11-1. Open market (informal) purchases.

Purchases of supplies and/or services with a value of ten thousand dollars (\$10,000.00) or less shall be made without observing the provisions prescribed for formal bids or formal proposals. Competitive informal bids (quotes) shall be obtained as provided below:

- (1) *Small purchases.* Purchases which do not exceed one thousand dollars (\$1,000.00) may be procured without competitive bids, when it best serves the interests of the town.
- (2) *Purchases between one thousand dollars (\$1,000.00) and ten thousand dollars (\$10,000.00).* Purchases of supplies and/or services, except in case of emergency or as otherwise provided herein, between one thousand dollars (\$1,000.00) and ten thousand dollars (\$10,000.00) shall require a minimum of three (3) competitive written quotes.

Sec.12-1. Purchasing awards thresholds.

Except as otherwise provided in this article, the authority for awards of contracts or purchases shall be made as follows:

- (1) *Purchasing administrator.* Amounts up to and including ten thousand dollars (\$10,000.00).
- (2) *Town council.* Amounts in excess of ten thousand dollars (\$10,000.00).

Sec.13-1. Prohibition against subdivision.

No contract or purchase shall be subdivided to avoid the requirements of this article.

Sec.14-1. Awards generally.

Awards of contracts or purchases shall be to the lowest most responsible bidder. In determining the lowest responsible bidder, the following, in addition to price, shall be considered:

- (1) The ability, capabilities, and skill of the bidder to perform under the terms of the bid documents.
- (2) Whether the bidder can perform the contract or provide the materials or service promptly, or 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 and the providing of materials and/or services.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract, or the providing of materials or services.
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the materials or services.
- (7) The quality, availability and adaptability of the supplies, equipment, or contractual services to the particular use required.
- (8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.
- (9) The number and scope of conditions attached to the bid.
- (10) The availability of supplies and services from vendors located within the Town.
- (11) Whether the entity is a certified minority business as defined by the Florida Small and Minority Business Assistance Act of 1985.
- (12) Whether the business is a certified drug-free workplace.

Sec.15-1. Award to other than lowest responsible bidder.

When the award is not given to the lowest responsible bidder, a statement of the reason for placing the order elsewhere shall be prepared and made a part of the record when bids are taken by formal method.

Sec.16-1. Tie bids.

Whenever identical bids are received, preference shall be given to the bid certifying a drug-free workplace has been implemented. If two (2) or more, or none, of the equal responses are received certifying that a drug-free workplace has been implemented, the contract shall be awarded to a local responsible bidder. Local bidder is defined to be a bidder whose business

office is located within the incorporated limits of the town. If there are no local bidders, then the contract shall be awarded to a bidder whose business office is located within the county. Should all or none of the bidders meet the preferences stated above, the purchasing administrator shall award the contract to one of the bidders by drawing lots in public.

Sec.17-1. Negotiations.

When only one bid is received under competitive bidding, negotiation is permitted in order to obtain a fair and reasonable price, or if the low responsive bid is considered by the purchasing administrator to be high, he/she shall have the authority to negotiate a lower price with the lowest responsible bidder. The purchasing administrator may negotiate for used equipment when deemed to be in the best interest of the town.

Sec.18-1. Emergency purchases.

Notwithstanding any other provisions of this article, the town administrator may make or authorize the purchasing administrator or others to make emergency procurement of supplies or services when there exists a threat to public health, safety, or welfare; provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be submitted to the purchasing administrator by the using agency and shall be included as part of the contract and filed with the town administrator.

Sec.19-1. Appeals and remedies.

- (a) *Right to protest.* Any actual or prospective bidder or proposer who is aggrieved in connection with a solicitation or award of a bid or contract may protest to the purchasing administrator in accordance with established procedures detailed in the purchasing manual.
- (b) *Remedy.* The purchasing administrator is authorized to settle any protest regarding the solicitation or award of a town contract any claim arising out of the performance of a town contract, prior to an appeal to the town administrator or town council, or the commencement of an action in a court of competent jurisdiction.
- (c) *Stay of procurement.* In the event of a timely protest properly filed, the purchasing administrator shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the town administrator or town council, as appropriate, makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the town.

Sec.20-1. Disposition of personal property.

- (a) *Reports.* All using agencies shall submit to the purchasing administrator, at such times and in such forms as prescribed, reports showing stocks of all supplies, material, and equipment which are no longer used, or which have become obsolete, worn out, or scrapped.
- (b) *Transfer.* The purchasing administrator, subject to approval of the town administrator, shall have the authority to transfer surplus stock to other using agencies.
- (c) *Sale.* The purchasing administrator shall have the authority to sell all surplus supplies which have become unsuitable for public use, or to exchange the same for or trade in the same on new supplies.”

SECTION 2. Severability.

In the event a court of competent jurisdiction shall hold or determine any or part of this ordinance invalid or unconstitutional, the remainder of this ordinance shall not be affected.

SECTION 3. Effective Date.

This ordinance shall take effect in accordance with the Town Charter.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF GRANT-VALKARIA, BREVARD COUNTY, FLORIDA, ON THIS 9th DAY OF JANUARY, 2008.

(Signature on file)

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Del Yonts, Mayor

ATTEST:

(Signature on file)

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Susanne Krueger, Town Clerk

1ST READING: November 14, 2007

2ND READING: December 12, 2007