

ORDINANCE NO. 13-24

AN ORDINANCE CREATING HILLSBOROUGH COUNTY CODE OF ORDINANCES AND LAWS, CHAPTER 2, ARTICLE VI, DIVISION 3 RELATING TO PROTEST POLICIES AND PROCEDURES FOR PROTESTS RELATED TO THE PROCUREMENT OF GOODS AND SERVICES BY HILLSBOROUGH COUNTY; PROVIDING FOR THE RIGHT TO PROTEST; PROVIDING PROCEDURES FOR FILING A PROTEST; PROVIDING THE RIGHT OF INTERESTED PARTIES TO INTERVENE IN A PROTEST; PROVIDING FOR THE STAY OF THE PROCUREMENT PROCESS DURING A PROTEST; PROVIDING FOR THE INITIAL REVIEW OF A PROTEST BY THE DIRECTOR OF THE COUNTY DEPARTMENT ISSUING THE PROCUREMENT SOLICITATION; PROVIDING FOR THE APPEAL OF THE DIRECTOR'S DECISION ON A PROTEST TO A HEARING MASTER; REQUIRING AN APPEALING PARTY TO FILE A BOND OR ALTERNATIVE FORM OF SECURITY WHEN APPEALING A PROTEST DECISION TO THE HEARING MASTER; PROVIDING FOR THE APPEAL OF THE HEARING MASTER'S DECISION ON A PROTEST TO THE COUNTY'S BOARD OF COUNTY COMMISSIONERS; DESIGNATING THE CUSTODIAN OF RECORDS RELATED TO A PROTEST UNDER THIS ORDINANCE; PROVIDING FOR A CONE OF SILENCE FOR PROCUREMENT SOLICITATIONS; PROVIDING FOR A HEARING MASTER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR INCLUSION OF ORDINANCE IN THE HILLSBOROUGH COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE.

Upon motion of Commissioner Sharpe, seconded by Commissioner Beckner, the following Ordinance was enacted by a vote of 5 to 0, with Commissioner(s) _____ voting "no", and Commissioner(s) Hagan and Miller being absent.

WHEREAS, the provisions of this Ordinance are based upon the authority granted to the Board of County Commissioners of Hillsborough County, Florida, in Article VIII, Section 1 of the Florida Constitution, Chapter 125, Florida Statutes, and the Hillsborough County Home Rule Charter adopted by Ordinance No. 83-9, as amended by Ordinance No. 04-9;

WHEREAS, the Hillsborough County Board of County Commissioners has a Procurement Policy that provides for the procurement of equipment, supplies and services;

WHEREAS, the Hillsborough County Board of County Commissioners has determined that it is in the best interest of Hillsborough County to establish a formal

protest process and procedures for bidders, proposers and any interested parties who have a grievance with the County's issuance of a bid solicitation, proposal solicitation or the pending award of any contract in the process utilized by Hillsborough County for the procurement of equipment, supplies, materials, or services and construction of public improvements.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA:

SECTION 1. CREATION OF CHAPTER 2, ARTICLE VI, DIVISION 3 OF HILLSBOROUGH COUNTY CODE OF ORDINANCES.

There is hereby created Chapter 2, Article VI, Division 3 of the Hillsborough County Code of Ordinances and Laws which shall be as follows:

SECTION 2. TITLE.

This Ordinance shall be known and may be cited as the "Hillsborough County Procurement Protest Policy and Procedures Ordinance".

SECTION 3. AUTHORITY.

This Ordinance is enacted pursuant to Article VIII, Section 1 of the Florida Constitution, Chapter 125, Florida Statutes, and the Hillsborough County Home Rule Charter adopted by Hillsborough County Ordinance No. 83-9, as amended by Ordinance No. 04-9 and as may be amended from time to time.

SECTION 4. APPLICATION OF ORDINANCE.

(a) **General Application.** This Ordinance shall apply only to protests that are initiated and/or filed after the effective date of this Ordinance.

(b) **Application to Procurements.** This Ordinance shall apply only to the following:

- (i) procurements that are supervised and/or overseen by a County Department that are at or over the Formal Bid Limit, irrespective of the source of the funds, including federal assistance monies except as otherwise specified by law;
- (ii) Sole Source Procurements that are supervised and/or overseen by a County Department, irrespective of the source of the funds, including federal assistance monies except as otherwise specified by law;
- (iii) any other grievances/protests related to procurements that are supervised and/or overseen by a County Department that cannot be resolved by the Department Director or County administration, and that have been referred by the Director or County administration to

the Hearing Master for resolution; whereupon, such grievances/protests shall fall under Sections 11(d) (e) (f) (g) (h) (i) (j) (k) (l) (m), Section 12, Section 13 and Section 14 of this Ordinance; and

- (iv) any other grievances/protests related to procurements that are supervised and/or overseen by a County Department that have been decided by the Department Director and/or County administration but which the Protesting Party wishes to appeal to the Hearing Master; whereupon, such grievances/protests shall fall under Sections 11(b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m), Section 12, Section 13 and Section 14 of this Ordinance.

SECTION 5. DEFINITIONS.

The following words and terms shall, wherever they appear in this Ordinance, have the meanings ascribed to them in this Section unless a different meaning is clear from the context:

“Board”/“Board of County Commissioners” shall mean the Board of County Commissioners of Hillsborough County, Florida.

“Business Day(s)” shall mean Monday through Friday from 8:00 a.m. to 5:00 p.m. Eastern Standard Time, excluding holidays that are observed by the County.

“County” shall mean Hillsborough County, a political subdivision of the State of Florida.

“County Administrator” shall mean the chief executive officer of the County or his/her designee.

“County Attorney” shall mean the chief legal officer of the County or his/her designee.

“County Department(s)” shall mean all County administrative departments that are overseen by the County Administrator.

“County Internal Auditor” shall mean the person appointed by the Board of County Commissioners to conduct continuing studies of the operation of the County’s programs and services or his/her designee.

“Director” shall mean the chief administrative officer of a County Department or his/her designee.

“Formal Bid Limit” shall mean the monetary amount at and over which the County is required to procure, by way of competitive sealed bids or competitive sealed requests for proposals, equipment, supplies, materials or services; said formal bid limit

shall be the monetary amount established by the Board pursuant to the Board's Procurement Policy, as may be amended from time to time.

"Interested Party(ies)" shall mean any party, other than the Protesting Party and the County, which will be directly affected by the resolution of the protest and who has legal standing under Florida law.

"Offeror" shall mean any person, partnership, corporation or other entity or organization that has submitted an offer, bid or proposal to the County in response to a procurement solicitation issued by the County to provide equipment, supplies, materials or services.

"Protesting Party(ies)" shall mean any prospective or actual Offeror who has filed with the County a grievance associated with a solicitation issued by the County for the procurement of equipment, supplies, materials or services, and/or any actual Offeror who has a grievance associated with an award notice issued by the County and/or the County's intent to award a contract on which the Offeror has timely submitted an offer in response to a solicitation issued by the County for the procurement of equipment, supplies, materials or services.

"Sole Source Procurements" shall mean procurements in which the needed equipment, materials, supplies or services are only available from one source or when it is determined that other methods of procurement are not feasible or not advantageous to the County.

SECTION 6. RIGHT TO PROTEST.

(a) Protesting Parties. The following persons and/or entities shall have the right to file a protest:

- (i) any prospective or actual Offeror who has a grievance associated with a procurement solicitation issued by a County Department for contracts at or over the Formal Bid Limit or for Sole Source Procurements; and
- (ii) any actual Offeror who has a grievance associated with an intent to award or an award notice issued by a County Department related to said Department's issuance of a procurement solicitation for contracts at or over the Formal Bid Limit or for Sole Source Procurements on which the Offeror has submitted a timely offer/response.

(b) Interested Parties. Any party, other than the Protesting Party and the County, which will be directly affected by the resolution of the protest and who has legal standing under Florida law, shall have the right to intervene in the protest proceedings of an active protest (i.e., a protest that has not been resolved).

SECTION 7. FILING OF PROTEST.

(a) Application to Protesting Party(ies). This Section shall govern protests by a Protesting Party. Protests not complying with the provisions of this Section shall not be considered.

(b) Time for filing protest. Protests shall only be accepted within the time periods stated herein. Any protest received outside of the stated time period shall not be considered. It is the responsibility of all Protesting Parties to review notices posted by the County to ensure that protests are filed in a timely manner.

- (i) *Protest of specifications and/or terms and conditions contained within the County's procurement solicitation* – any protest associated with the specifications and/or terms and conditions contained within a procurement solicitation that has been issued by the County must be received no later than five (5) Business Days before the response submittal deadline for the procurement solicitation. Protests must be received no later than 5:00 p.m. Eastern Standard Time.
- (ii) *Protest associated with an award notice issued by the County and/or the County's intent to award a contract and/or the completion of the short listing process* – any protest associated with (aa) an award notice issued by the County, (bb) the County's intent to award a contract, and/or (cc) the County's completion of the short listing process, must be received no later than five (5) Business Days from the date the County posts its notice of intent to award, recommendation of award or short list. The protest must be in writing and must be submitted in accordance with subsection (c) below. In the event a protest is filed/submitted without the required information and documentation specified in subsection (d) below, then such information and documentation must be received by the County no later than ten (10) Business Days from the date the County posts its notice of intent to award, recommendation of award or short list and must be submitted in accordance with subsection (c) below. The County's notice or recommendation of award and/or notice of the short list shall be posted via the means specified in the County's procurement solicitation. Protests must be received no later than 5:00 p.m. Eastern Standard Time.

The County shall have the right to allow for additional time to file a protest, provided that such additional time is specifically set forth in the applicable procurement solicitation and/or any addenda thereto.

(c) Submittal of protest. All protests must be addressed to and submitted to the Director of the County Department that issued the applicable procurement solicitation and sent to the address listed on the cover sheet of the procurement solicitation or other

address specified by the County Department. Protests must be delivered to the Director via certified or registered mail, electronic mail (e-mail), facsimile (with the original copy sent immediately following) or hand-delivered to the Director or his/her designee. Protests shall be date and time stamped by the County upon receipt and, if hand-delivered, the County shall issue a receipt to the Protesting Party stating the date and time the protest was received by the County. However, the County shall not issue receipts for protests delivered via Federal Express (FedEx), United Parcel Service (UPS) or similar courier service that has independent delivery verification. The Protesting Party shall bear all costs associated with its submissions to the County.

(d) Required form of protest. All protests must be in writing and shall contain the following information:

- (i) The package containing the protest must be clearly labeled and marked with the word "PROTEST" and must clearly identify the procurement solicitation on which the protest is based, including, but not limited to, the title and number assigned to the solicitation by the County (example, bid or proposal number and title);
- (ii) The Protesting Party's name and postal address, the name of the Protesting Party's contact person and said person's e-mail address, telephone number and facsimile number, and the contact information of the Protesting Party's legal counsel, if applicable;
- (iii) A statement that clearly communicates that the Protesting Party is submitting a formal protest to the County;
- (iv) Clear and concise statements indicating the grounds and evidence on which the protest is based, including, but not limited to, facts, rules, regulations, laws and statutes and all supporting documents. Any grounds that are not specifically stated in writing at the time the protest is filed shall be waived by the Protesting Party;
- (v) A statement reciting the specific ruling or relief requested; and
- (vi) The signature of an authorized agent of the Protesting Party.

(e) Additional information requested by County. The Protesting Party shall provide any additional information requested by the County within the time period specified in the County's request. Failure to provide the requested information and/or failure to timely provide the requested information may result in the resolution of the protest without consideration of the requested information.

(f) Allegations of misconduct or misrepresentation by a competing Offeror. Allegations of misconduct or misrepresentation on the part of a competing Offeror shall not be considered a protest, but will be reviewed and, if appropriate, in the County's sole discretion, will be used for the purpose of evaluating the qualifications and/or responsibility of the applicable Offeror. This shall include, but is not limited to, allegations that a competing Offeror intends to use or is currently using unauthorized workers, unless such an allegation has been determined to be factual by the U.S. Immigration and Customs Enforcement (ICE) prior to the date the contract is scheduled

to be awarded by the County. If such an allegation has been determined to be factual by ICE, then such allegation shall be treated as a protest.

(g) **Legal counsel.** A Protesting Party may be represented by legal counsel at its own expense.

SECTION 8. INTERVENTION OF INTERESTED PARTIES IN PROTEST.

(a) **Application to Interested Parties.** This Section shall govern interventions filed in active protests by Interested Parties. Interested Parties cannot intervene in a protest once the protest has been resolved.

(b) **Time for filing an intervention.** An Interested Party shall have the right to intervene in an active protest proceeding by providing the County with written notice of its intervention in a protest no later than five (5) Business Days after the Offerors in the applicable procurement solicitation have received notification from the County that a protest has been filed. Such notice shall be in writing and shall be submitted in accordance with subsection (c) below. In the event an intervention is filed/submitted without the required information and documentation specified in subsection (d) below, then the Interested Party must submit such information and documentation to the County no later than ten (10) Business Days after said Interested Party has received notification from the County that a protest has been filed. Said documents must be received no later than 5:00 p.m. Eastern Standard Time. The County shall have the right to allow for additional time to file an intervention, provided that such additional time is specifically set forth in the applicable procurement solicitation and/or any addenda thereto. The County Department with which the protest is filed shall notify all Offerors on an applicable procurement solicitation that a protest has been filed.

(c) **Submittal of intervention documents.** All intervention documents must be addressed to and submitted to the Director of the County Department that issued the applicable procurement solicitation and sent to the address listed on the cover sheet of the procurement solicitation or other address specified by the County Department. Documents/submissions must be delivered to the Director via certified or registered mail, electronic mail (e-mail), facsimile (with the original copy sent immediately following) or hand-delivered to the Director or his/her designee. Submissions shall be date and time stamped by the County upon receipt and, if hand-delivered, the County shall issue a receipt to the Interested Party stating the date and time the documents were received by the County. However, the County shall not issue receipts for intervention documents delivered via Federal Express (FedEx), United Parcel Service (UPS) or similar courier service that has independent delivery verification. The Interested Party shall bear all costs associated with its submissions to the County.

(d) **Required form of intervention.** All protest interventions must be in writing and shall contain the following information:

- (i) The package containing the intervention must be clearly labeled and marked with the words “PROTEST INTERVENTION” and must clearly identify the procurement solicitation and protest on which the intervention is based, including, but not limited to, the title and number assigned to the solicitation by the County (example, bid or proposal number and title);
- (ii) The Interested Party’s name and postal address, the name of the Interested Party’s contact person and said person’s e-mail address, telephone number and facsimile number, and the contact information of the Interested Party’s legal counsel, if applicable;
- (iii) A statement that clearly communicates that the Interested Party is intervening in an active protest proceeding with the County;
- (iv) Identification of the Interested Party’s legal standing to intervene in the protest proceedings;
- (v) Clear and concise statements indicating the grounds and evidence on which the intervention is based, including, but not limited to, facts, rules, regulations, laws and statutes and all supporting documents;
- (vi) A statement reciting the specific ruling or relief requested; and
- (vii) The signature of an authorized agent of the Interested Party.

(e) **Additional information requested by County.** The Interested Party shall provide any additional information requested by the County within the time period specified in the County’s request. Failure to provide the requested information and/or failure to timely provide the requested information may result in the resolution of the protest without consideration of the requested information.

(f) **Legal counsel.** An Interested Party may be represented by legal counsel at its own expense.

SECTION 9. STAY OF PROCUREMENT PROCESS DURING PROTEST.

Notwithstanding anything contained in this Ordinance to the contrary, the Director of the County Department issuing the procurement solicitation shall stay the procurement process as it relates to the applicable protest, unless the County Administrator or his/her designee, with the advice of the County Attorney’s office and after consultation with the using County Department, makes the determination that the award of the contract without delay is necessary to protect the substantial interests of the County.

SECTION 10. REVIEW OF PROTEST BY THE DIRECTOR.

(a) **Director’s review of protest.** When a protest has been timely and properly filed with the County, the Director of the County Department that issued the applicable procurement solicitation shall review and render a decision on the protest. The

review by the Director shall include, but is not limited to, review of the protest and all supporting documents filed by the Protesting Party, review of documents submitted by any Interested Parties that have properly intervened in the protest proceedings, review of responses and/or documents provided by County staff, consideration of information obtained from meetings with the Protesting Party, intervening Interested Parties, and/or County staff, and review and consideration of any applicable policies, procedures, ordinances, statutes and laws. The Director shall have the right to request additional information from the Protesting Party and any intervening Interested Parties that the Director believes may be helpful in the review of the protest. The applicable County Department shall prepare minutes of all meetings between County staff and the Protesting Party and/or intervening Interested Parties regarding the protest.

(b) Director's decision. After conducting his/her review of the protest, the Director may make the determination to:

- (i) Uphold the protest; if the Director upholds the protest, then the Director shall take the corrective actions necessary to address the issues raised in the protest, which may include, but is not limited to, canceling the procurement solicitation, issuing an addendum to the procurement solicitation, re-issuing the procurement solicitation, awarding the procurement solicitation in part, changing staff's award recommendation, or implementing an alternative remedy if it is in the best interest of the County and in compliance with applicable laws; or
- (ii) Deny the protest; if the Director denies the protest, then the County shall resume the procurement process as it relates to the applicable procurement unless the decision of the Director is appealed pursuant to this Ordinance.

(c) Notification of Director's decision. The Director shall issue his/her decision in writing and the decision shall be sent via certified or registered mail, electronic mail (e-mail) or facsimile to the Protesting Party and all Interested Parties that have properly intervened in the protest proceedings pursuant to this Ordinance.

(d) Appeal of Director's decision. The Protesting Party and any Interested Parties that have properly intervened in the protest proceedings shall have the right to appeal the Director's decision to a Hearing Master pursuant to the procedures set forth in Section 11 of this Ordinance.

SECTION 11. APPEAL TO HEARING MASTER.

(a) Right to appeal to Hearing Master. Only the Protesting Party and/or an Interested Party that has properly intervened in the protest proceedings shall have the right to appeal the Director's decision to the Hearing Master.

(b) Filing of appeal. All appeals must be filed no later than five (5) Business Days from the date of the Protesting Party's and the Interested Party's receipt of the Director's written decision, respectively. Appeals filed outside of this timeframe shall not be considered. All appeals must be delivered to the Director of the County Department that issued the applicable procurement solicitation via certified or registered mail, electronic mail (e-mail), facsimile (with the original copy sent immediately following) or hand-delivered to the Director or his/her designee. Appeals shall be date and time stamped by the County upon receipt and, if hand-delivered, the County shall issue a receipt to the party filing the appeal stating the date and time the appeal was received by the County. However, the County shall not issue receipts for appeals delivered via Federal Express (FedEx), United Parcel Service (UPS) or similar courier service that has independent delivery verification. The party(ies) filing the appeal shall bear all costs associated with its submissions to the County.

(c) Required form of appeal. All appeals must be in writing and shall contain the following information:

- (i) The package containing the appeal must be clearly labeled and marked with the words "APPEAL OF PROTEST DECISION" and must clearly identify the procurement solicitation and protest on which the appeal is based, including, but not limited to, the title and number assigned to the solicitation by the County (example, bid or proposal number and title);
- (ii) The appealing party's name and postal address, the name of the appealing party's contact person and said person's e-mail address, telephone number and facsimile number, and the contact information of the appealing party's legal counsel, if applicable;
- (iii) A statement that clearly communicates that the appealing party is formally appealing the Director's decision regarding a protest;
- (iv) Clear and concise statements indicating the grounds and evidence on which the appeal is based, including, but not limited to, facts, rules, regulations, laws and statutes and all supporting documents. Unless otherwise provided for in this Ordinance, new issues or evidence not previously set forth in the written protest that reasonably could have been raised when the protest and/or intervention was initially submitted, shall not be considered;
- (v) A statement reciting the specific ruling or relief requested; and
- (vi) The signature of an authorized agent of the appealing party.

(d) Appeal bond.

(i) *Bond required* - All appealing parties shall be required to file a bond in an amount equal to one (1) percent of the estimated contract amount. The estimated contract amount shall be based upon the monetary amount submitted by the appealing party in its offer to the County in response to the applicable procurement solicitation. If no monetary amount was submitted by the appealing party, then the estimated contract amount shall be the County's estimated cost/price of the equipment,

supplies, materials or services (including construction) that are the subject of the procurement. In no case shall the bond amount be less than Two Thousand dollars (\$2,000.00) or more than Ten Thousand dollars (\$10,000.00). The surety issuing the bond must be authorized to do business in the State of Florida and must be in compliance with the Florida Insurance Code. The bond must have a duly executed power of attorney attached and must be issued or countersigned by an authorized agent, with satisfactory evidence of the authority of the person(s) executing the bond. The bond must be furnished to the County at the time the appeal is filed with the County.

(ii) *Alternative forms of security* - In lieu of a bond, the appealing party may file with the County an alternative form of security in the amount set forth in subsection 11(d) above which shall be in the form of money order, certified check, cashier's check or irrevocable letter of credit. Any submitted certified check or irrevocable letter of credit shall be drawn on a solvent bank or trust company to the order of Hillsborough County Board of County Commissioners, and shall have all necessary documentary revenue stamps attached, if required by law. Personal checks, business checks and cash deposits are not acceptable.

(iii) *Forfeiture or refund of bond/security* - The bond or security provided by the appealing party shall be designated and held for the payment of costs or charges to the County related to the appeal, excluding attorney's fees, that may be levied against the appealing party if the appealing party loses its appeal pursuant to the decision of the Hearing Master and/or the Board of County Commissioners. Such costs shall include, but are not limited to, the Hearing Master fees, the cost of a court reporter for the Hearing Master proceedings, transcripts of the Hearing Master proceedings, and any other costs that are over and above the County's normal operational costs that are directly related to the County's response to the protest or protest intervention, as applicable. Any costs and charges not fully discharged by the amount of the appealing party's bond or security shall be paid by the appealing party within ten (10) Business Days of the Hearing Master's/Board's decision. Failure to pay such costs and charges within the specified time period may result in the appealing party being debarred by the County for a period of up to twenty four (24) months. If the appealing party is successful in its appeal, then the County shall return/refund the bond or security in full. The entire amount of the bond or security shall be forfeited if the Hearing Master determines that the protest is baseless and/or was filed for an improper purpose, including, but not limited to, the purpose of harassing, causing unnecessary delay, or causing needless cost to the County or other parties.

(iv) *Failure to provide bond/security* - Failure to furnish the County with the required bond/security within the required timeframe shall result in dismissal of the appealing party's appeal without further consideration.

(v) *Waiver of bond requirement for registered Small Business Enterprises (SBEs)* - Small Business Enterprises that are registered with the County and that are Offerors on a small business set-aside procurement solicitation issued by the County shall not be required to furnish a bond or security when appealing a protest

decision related to such procurement solicitation. Said Small Business Enterprise must be registered with the County at the time of the response submittal deadline of the applicable procurement solicitation.

(vi) *Bond requirement for protests that fall under Section 4(b)(iii) of this Ordinance* - There shall be no bond or security required for appeals of protests that fall under Section 4(b)(iii) of this Ordinance.

(e) Notice of hearing to parties. Upon the timely and proper filing of an appeal, the Director shall immediately notify the County Attorney's Office of the appeal and shall forward the appeal to the Hearing Master designated pursuant to Section 15 of this Ordinance within three (3) Business Days of the Director's receipt of the appeal. The Hearing Master shall set a hearing date not more than fifteen (15) Business Days from the date of receipt of the appeal from the Director. The Hearing Master shall cause notice of the hearing date, time and location to be served upon all parties who will be directly affected by the resolution of the appeal, including, but not limited to, the appealing party, the County and applicable Interested Parties. The notice of hearing shall be sent via certified or registered mail, electronic mail (e-mail) or facsimile. The Hearing Master may extend the deadline for the hearing by filing a written request to the Director for good cause shown. The Director shall have the authority to grant, deny or modify such request.

(f) Notice of hearing to the public. The hearing before the Hearing Master shall be open to the public. The County Department that issued the procurement solicitation on which the protest is based shall issue a public notice of the hearing within 2 (two) Business Days of the County's receipt of the hearing notice from the Hearing Master.

(g) Record on appeal. The Hearing Master shall review the record on appeal. The record on appeal shall consist of the following:

- (i) the original protest and all supporting documents submitted to the County by the Protesting Party;
- (ii) all documents submitted to the County by an intervening Interested Party in the protest;
- (iii) all documents submitted to the Director by County staff in response to the protest;
- (iv) transcripts/minutes of all meetings between County staff and the Protesting Party and/or intervening Interested Parties regarding the protest;
- (v) copies of any other documents, policies, procedures, ordinances, statutes or laws taken into consideration by the Director in issuing his/her decision regarding the protest; and
- (vi) the written decision of the Director regarding the protest and all documents attached thereto.

In addition to the record on appeal, the parties may freely refer to any applicable policies, procedures, cases or laws in presenting their cases to the Hearing Master.

If a party (including the County) believes that, in order to fully present its case, additional evidence must be presented to the Hearing Master, then the nature of such additional evidence must be disclosed to the Hearing Master and the other parties (the County, the appealing party, the Protesting Party and any intervening Interested Parties) no less than five (5) Business Days before the scheduled hearing before the Hearing Master. The Hearing Master shall rule on whether such additional evidence may be presented at the hearing no later than two (2) Business Days before the scheduled hearing before the Hearing Master. The Hearing Master shall freely allow the presentation of additional evidence pursuant to this subsection where such evidence is relevant to the issue on appeal.

(h) Additional information requested by Hearing Master. The Hearing Master may request additional information from the parties that he/she deems relevant in the review and resolution of the appeal. All parties shall provide such information within the time period specified in the Hearing Master's request.

(i) Ex parte communications. To ensure that the Hearing Master is free from improper influence, the Hearing Master shall not initiate, participate in or consider ex parte communications with the appealing party, Interested Parties, County staff, County agents and/or the Board of County Commissioners and/or their aides regarding an appeal pending before the Hearing Master. However, this does not preclude the Hearing Master from soliciting and obtaining advice from the County Attorney's Office regarding procedures and process, provided that, the attorney rendering such advice is not directly involved in the applicable procurement solicitation and/or its related protest, and that said attorney has been insulated from the procurement solicitation and protest. Ex parte communications shall also not include the transmission of official information and documents related to the appeal and/or the administrative support provided to the Hearing Master by the County as specifically set forth in this Ordinance.

(j) Hearing Master review and hearing.

- (i) *Standard of review* - The Hearing Master shall conduct a de novo review of the protest.
- (ii) *Standard and burden of proof* - The standard of proof shall be whether the decision by the Director was clearly erroneous, arbitrary, capricious, fraudulent, or otherwise without basis in fact or law. The appealing party shall have the burden of proof.
- (iii) *Evidence* - The Hearing Master's decision shall be based on substantial competent evidence. The hearing shall be limited to the record on appeal and any additional information and/or evidence provided for in Section 11(g) of this Ordinance. Hearsay evidence shall be admissible in the hearing, but shall not be the sole basis of the decision of the Hearing Master. The judicial rules of evidence

and procedure shall not apply to the hearing; however, the Hearing Master shall ensure that all parties are afforded meaningful due process and fundamental fairness at all times.

- (iv) *Hearing procedure* - The hearing shall begin with the Hearing Master's statement of the rules and procedures of the hearing, followed by a general statement of the facts by the Director or designated County staff. The appealing party will then have the opportunity to present its case; such presentation shall be made by the appealing party's owners, officers, employees, agents or legal counsel and may include testimony by the appealing party's owners, officers, employees and/or agents. After the presentation by the appealing party, any Interested Party will be given the opportunity to be heard and to present information. After the presentations by the Interested Parties, the County shall have the opportunity to present its case; such presentation may include testimony of County employees, agents and/or Interested Parties. After all parties have presented their cases, the appealing party and the County shall have the opportunity to address and/or rebut any information or arguments presented by another party during such party's presentation. Party presentations shall be limited to two (2) hours per party and rebuttals shall be limited to fifteen (15) minutes per party. In the event of multiple appeals, the Hearing Master shall allocate time as necessary to ensure that the hearing shall not exceed one (1) Business Day. After all party presentations, the Hearing Master shall have the opportunity to question the parties and their witnesses in order to obtain information the Hearing Master deems relevant to the resolution of the appeal. The Hearing Master may also make inquiries during a party's presentation; however, such inquiries should not significantly delay and/or disrupt a party's presentation and such inquiries should be solely for the purpose of obtaining information the Hearing Master deems relevant to the resolution of the appeal. Members of the public and/or spectators of the hearing shall not be permitted to participate in or interrupt the hearing.
- (v) *Court reporter* - there shall be a court reporter present at the hearing for the purpose of transcribing the hearing proceedings. The County shall have the sole discretion in the selection of the court reporter.

(k) Hearing Master's decision. Within five (5) Business Days of the date of the hearing, the Hearing Master shall issue a written decision on the appeal. Such decision shall state the Hearing Master's findings of fact and conclusions of law and shall either:

- (i) Affirm the Director's decision on the protest; if the Hearing Master upholds the Director's decision, then: (1) the Hearing Master shall assess against the appealing party reasonable and actual costs

incurred by the County as a result of the appeal process, including, but not limited to, the costs and fees for the Hearing Master and the cost of the court reporter and any resulting transcripts, and (2) the County shall resume the procurement process as it relates to the applicable procurement unless the decision of the Hearing Master is appealed pursuant to this Ordinance; or

- (ii) Overturn the Director's decision on the protest; if the Hearing Master overturns the Director's decision, then the Director shall take the corrective actions necessary to address the issues raised in the appeal, which may include, but is not limited to, canceling the procurement solicitation, issuing an addendum to the procurement solicitation, re-issuing the procurement solicitation, awarding the procurement solicitation in part, changing staff's award recommendation, or implementing an alternative remedy if it is in the best interest of the County and in compliance with applicable laws.

(l) Notice of Hearing Master's decision. The Hearing Master shall send his/her written decision via certified or registered mail, electronic mail (e-mail) or facsimile to the County, the appealing party and all Interested Parties that were present at the hearing.

(m) Appeal of Hearing Master's decision. The appealing party and any intervening Interested Party shall have the right to appeal the Hearing Master's decision to the Board of County Commissioners pursuant to the procedures set forth in Section 12 of this Ordinance.

SECTION 12. APPEAL TO THE BOARD OF COUNTY COMMISSIONERS.

(a) Right to appeal to Board. Only the Protesting Party and/or an Interested Party that has properly intervened in the protest proceedings shall have the right to appeal the Hearing Master's decision to the Board of County Commissioners.

(b) Filing of appeal. All appeals to the Board must be filed no later than five (5) Business Days from the date of the Protesting Party's and the Interested Party's receipt of the Hearing Master's written decision, respectively. Appeals filed outside of this timeframe shall not be considered. All appeals must be delivered to the Director of the County Department that issued the applicable procurement solicitation via certified or registered mail, electronic mail (e-mail), facsimile (with the original copy sent immediately following) or hand-delivered to the Director or his/her designee. Appeals shall be date and time stamped by the County upon receipt and, if hand-delivered, the County shall issue a receipt to the party filing the appeal stating the date and time the appeal was received by the County. However, the County shall not issue receipts for appeals delivered via Federal Express (FedEx), United Parcel Service (UPS) or similar courier service that has independent delivery verification. The party(ies) filing the appeal shall bear all costs associated with its submissions to the County.

(c) Required form of appeal. All appeals to the Board must be in writing and shall contain the following information:

- (i) The package containing the appeal must be clearly labeled and marked with the words "APPEAL OF PROTEST DECISION" and must clearly identify the procurement solicitation and protest on which the appeal is based, including, but not limited to, the title and number assigned to the solicitation by the County (example, bid or proposal number and title);
- (ii) The appealing party's name and postal address, the name of the appealing party's contact person and said person's e-mail address, telephone number and facsimile number, and the contact information of the appealing party's legal counsel, if applicable;
- (iii) A statement that clearly communicates that the appealing party is formally appealing the Hearing Master's decision regarding a protest;
- (iv) Clear and concise statements indicating the grounds and evidence on which the appeal is based, including, but not limited to, facts, rules, regulations, laws and statutes and all supporting documents. New grounds or evidence not previously set forth during the Director's review of the protest and/or the Hearing Master's review of the protest that reasonably could have been raised at that time, shall not be considered;
- (v) A statement reciting the specific ruling or relief requested; and
- (vi) The signature of an authorized agent of the appealing party.

(d) Record on appeal to Board. The Board shall review the record on appeal. The record on appeal shall consist of the following:

- (i) the original protest and all supporting documents submitted to the County by the Protesting Party;
- (ii) all documents submitted to the County by an intervening Interested Party in the protest;
- (iii) all documents submitted to the Director by County staff in response to the protest;
- (iv) transcripts/minutes of all meetings between County staff and the Protesting Party and/or intervening Interested Parties regarding the protest;
- (v) copies of any other documents, policies, procedures, ordinances, statutes or laws taken into consideration by the Director in issuing his/her decision regarding the protest;
- (vi) the written decision of the Director regarding the protest and all documents attached thereto;
- (vii) all documents submitted to and considered by the Hearing Master in reaching his/her decision that are not duplicative of the documents listed in subsections (i) through (vi) above;

- (viii) the transcript/minutes of the hearing before the Hearing Master; and
- (ix) the written decision of the Hearing Master and all documents attached thereto.

New issues or evidence not previously set forth during the Director's and Hearing Master's review of the protest that reasonably could have been raised at the time of such review, shall not be considered.

In addition to the record on appeal set forth in this Section, the parties may freely refer to any applicable policies, procedures, cases or laws in presenting their cases to the Board.

(e) Notice of Board review. Once an appeal to the Board has been timely and properly filed, the Director shall schedule the appeal to be heard by the Board at a regularly scheduled meeting of the Board. The Director shall issue such notice via certified or registered mail, electronic mail (e-mail) or facsimile to the appealing party and all Interested Parties that have properly intervened in the protest proceedings pursuant to this Ordinance.

(f) Review of appeal by Board. The Board shall review and resolve the appeal based on the record on appeal set forth in Section 12(d) of this Ordinance. The Board shall not consider new issues or evidence that were not previously set forth during the Director's and/or Hearing Master's review of the protest that could have reasonably been raised at the time of such review. Presentation to the Board by the parties, including the County, shall be limited to ten (10) minutes per party, unless otherwise requested by the Board. The foregoing time limitation shall be inclusive of all speakers addressing the Board on behalf of each party. Prior to issuing its decision on the appeal, the Board may question the parties in order to obtain information the Board deems relevant to the resolution of the appeal.

(g) Board's decision. Upon conclusion of the party presentations, the Board may issue the following decisions by a majority vote of the Board members:

- (i) Affirm the Hearing Master's decision on the appeal;
- (ii) Remand the appeal back to the Hearing Master for additional proceedings; if the appeal is remanded back to the Hearing Master, then the Board shall specify the reason for the remand and shall specify the issues to be addressed by the Hearing Master; or
- (iii) Overturn the Hearing Master's decision on the appeal; the Board shall overturn the Hearing Master's decision only if all of the following criteria have been met:
 - (aa) the appeal has already been remanded back to the Hearing Master at least one (1) time; and
 - (bb) based on the record on appeal set forth in Section 12(d) of this Ordinance, the Board finds that the findings of fact and conclusions of law set forth in

the Hearing Master's decision is unsupported by competent and substantial evidence in the record or if essential requirements of law have not been followed.

The decision of the Board shall be the final and conclusive decision by the County of the protest and shall thereafter represent the position of the County with regard to such protest.

SECTION 13. CUSTODIAN OF RECORDS.

The County Department that issued the procurement solicitation on which the protest is based shall maintain a file of all records and/or documents related to the protest process set forth in this Ordinance and shall be the official custodian of such records.

SECTION 14. CONE OF SILENCE.

To safeguard the integrity of the County's procurement and protest process, there shall be a Cone of Silence for all procurement solicitations issued by the County. The Cone of Silence shall go into effect on the date a procurement solicitation is issued by the County and shall end on the date the contract is awarded by the County or the date the procurement solicitation is canceled by the County. Unless otherwise provided for in this Ordinance, during the time period the Cone of Silence is in effect, no Offeror, Interested Party and/or their principals, officers, employees, attorneys or agents shall communicate with County employees, the Hearing Master and/or members of the Board of County Commissioners, including their aides and employees regarding a procurement solicitation and/or its related protest. The Cone of Silence does not prohibit an Offeror from communicating with the Director of the County Department issuing the procurement solicitation, County staff listed as contacts in the procurement solicitation, or the attorney in the County Attorney's office that is directly responsible for the applicable procurement solicitation (this information can be obtained by contacting the County staff person listed as the contact in the applicable procurement solicitation). Persons falling within the Cone of Silence shall have a duty to report any violations of the Cone of Silence to the County Internal Auditor or his/her designee who shall investigate such Cone of Silence violations. A violation of the Cone of Silence will result in the disqualification of the Offeror from consideration in the award of the procurement solicitation unless it is determined that the violation is unintentional and/or not material. If an Offeror is disqualified from consideration in the award of a procurement solicitation because of a Cone of Silence violation and said Offeror objects to the disqualification, then the Offeror's objection shall be treated as a protest under this Ordinance.

SECTION 15. HEARING MASTER.

(a) Procurement of Hearing Masters. The County Attorney's office shall be responsible for the procurement of two (2) or more persons to serve as Hearing Masters pursuant to this Ordinance.

(b) Qualifications. The Hearing Master shall have the educational background and public or private employment experience that will enable such person to competently examine facts and apply legal principles. Such background and experience may include, but is not limited to, experience with evidentiary and civil procedure issues and controversies regarding the public procurement of goods and services, including construction.

(c) Conflict of interest. No County employee, County official, or anyone who has a financial interest in any business entity that conducts business with the County shall be considered or shall serve as a Hearing Master. No former County employee or County official shall be considered or shall serve as a Hearing Master until at least two (2) years after the end date of such person's employment with the County.

(d) Administrative support. If deemed necessary by the Hearing Master, the County shall provide reasonable administrative and support services to the Hearing Master as they directly relate to any appeals being heard by the Hearing Master.

(e) Compensation. The County shall compensate the Hearing Master for the services performed pursuant to this Ordinance. If an appealing party's bond or security is forfeited pursuant to this Ordinance, then the applicable portion of such bond/security shall be used to reimburse the County for payment of the Hearing Master's fees.

(f) Assignment of Hearing Masters to appeals. The Hearing Masters shall be assigned to hear appeals on a rotating basis in alphabetical order. If a Hearing Master is unable to hear an appeal because of a conflict, time constraints, or for any other reason, the appeal shall be assigned to the next Hearing Master in said alphabetical order.

SECTION 16. SEVERABILITY.

If any clause, section or provision of this Ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said Ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

SECTION 17. CONFLICTS.

All ordinances or parts of ordinances in conflict herewith are hereby superseded or repealed to the extent of such conflict.

SECTION 18. INCLUSION IN THE HILLSBOROUGH COUNTY CODE.

The provisions of this Ordinance shall be included and incorporated in the Hillsborough County Code as an addition thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Hillsborough County Code.

SECTION 19. FILING; EFFECTIVE DATE.

A certified copy of this Ordinance shall be filed with the Florida Department of State within ten (10) days after enactment, and this Ordinance shall take effect immediately upon such filing.

**STATE OF FLORIDA
COUNTY OF HILLSBOROUGH**

I, PAT FRANK, Clerk of the Circuit Court and Ex Officio Clerk of the Board of County Commissioners of Hillsborough County, Florida, do hereby certify that the above and foregoing is a true and correct copy of an ordinance enacted by the Board at its meeting of August 21, 2013, as the same appears of record in Minute Book 447 of the Public Records of Hillsborough County, Florida.

WITNESS my hand and official seal this 22nd day of August, 2013.

PAT FRANK, CLERK OF CIRCUIT COURT

By: Beverly Anne Miller
Deputy Clerk

Approved by County Attorney
As to Form of Legal Sufficiency

By: [Signature]
Assistant County Attorney

