

## ***ARTICLE V. PURCHASING REGULATIONS***

### **DIVISION 1. - PROCUREMENT<sup>1</sup>**

#### **Sec. 2-96. Authority.**

The provisions of this article are based upon the authority granted to the Board of County Commissioners of Hernando County, Florida, in Chapter 125, Florida Statutes.

(Ord. No. 93-16, § II(A), 7-13-93)

#### **Sec. 2-97. Title.**

The provisions of this article shall be known and cited as the "Hernando County Procurement Ordinance".

(Ord. No. 93-16, § II(B), 7-13-93)

#### **Sec. 2-98. General purpose.**

The purpose of this article is to establish the county's purchasing function under a centralized system which will enable the county to:

- (1) Establish uniform policies and procedures governing purchases and contracts by the county;
- (2) Obtain goods and services of satisfactory quality and quantity at reasonable cost for the county;
- (3) Foster effective competition within the free enterprise system; and
- (4) Provide safeguards for the maintenance of a procurement system of quality and integrity.

(Ord. No. 93-16, § II(C), 7-13-93)

#### **Sec. 2-99. Supplementary general principles of law applicable.**

The county shall comply with all federal and state laws applicable to county purchases, procurements and contracts.

The principles of law and equity, including the Uniform Commercial Code of this state, laws relative to ethics, and laws relative to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this article.

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<sup>1</sup>Editor's note(s)—Ordinance No. 93-16, §§ I—VI, adopted July 13, 1993, amended Art. V by repealing §§ 2-96—2-100 and enacting new provisions, which were designated as §§ 2-96—2-110 at the editor's discretion. Formerly, §§ 2-96—2-100 contained similar provisions and derived from Ord. No. 82-3, §§ 1—4, adopted Feb. 9, 1982.

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(Ord. No. 93-16, § II(D), 7-13-93)

### **Sec. 2-100. Requirement of good faith.**

The provisions of this article require all parties involved in the development, performance, or administration of purchasing contracts of the board of county commissioners to act in good faith.

(Ord. No. 93-16, § II(E), 7-13-93)

### **Sec. 2-101. Application and exclusions.**

The provisions of this article shall apply to purchases and procurements of the board of county commissioners and its various agencies, authorities, boards, bureaus, commissions, committees, councils, departments, divisions, districts, employees, institutions, legislative bodies, municipal service benefit units (msbu), officers, the county administrator, the county attorney, the county aviation authority, and the county port authority, any other ordinance or special act to the contrary notwithstanding, which are under the control of, or derive their authority from the board of county commissioners, irrespective of their funding source, including state and federal assistance monies, except as otherwise specified by law. They shall not apply to:

- (1) Purchase/procurement of goods, construction and/or services by:
  - a. Reserved.
  - b. Constitutional officers meaning the sheriff, clerk of the circuit court, property appraiser, tax collector and supervisor of elections.
- (2) Agreements between the board of county commissioners and nonprofit organizations or governmental entities, including the procurement, transfer, sale or exchange of goods and/or services.
- (3) Procurement of dues and memberships in trade or professional organizations; subscriptions for periodicals; books and publications; advertisements; postage; medical and dental services; legal services; expert witnesses; abstracts of titles for real property; title insurance for real property; court reporter services; temporary labor services; accounting services; financial advisory services; insurance, including property, casualty, health and automobile coverages; water, sewer, telephone and electrical utility services; copyrighted materials (including proprietary computer software); patented materials; educational reimbursements and fees and costs of job-related seminars and training.
- (4) Real property.
- (5) Goods and/or services given or accepted by the county via grant, gift or bequest.
- (6) Goods purchased with petty cash in accordance with policies and procedures approved by the board of county commissioners.
- (7) Cybersecurity related items:
  - a. Insurance or other risk mitigation coverage acquired for the protection of information technology systems, operational technology systems, or data.
  - b. Critical infrastructure
  - c. Cybersecurity incidents
  - d. Network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed Cybersecurity incidents, including suspected or confirmed breaches, if the disclosure

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of such purchase information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of: Data or information, whether physical or virtual; or information technology resources, which include an agency's existing or proposed information technology systems.

- e. Other sensitive Cybersecurity items as determined by the Chief Procurement Officer and Chief Information Officer.

(Ord. No. 93-16, § II(F), 7-13-93; Ord. No. 02-23, § I, 12-17-02)

## **Sec. 2-102. Definitions.**

When used in this article, the following terms are to be defined and construed as follows:

*Administrator* means the county administrator, or county administrator's designee.

*Agreement* means the same as and is fully synonymous with "contract".

*Bid* or *bids* means a formal written price offer by a vendor to the county to furnish goods and/or services in response to a competitive solicitation for bids or request for proposals. The term bid or bids shall apply to, but not be limited to, invitations for bids, requests for proposal, request for qualifications and competitive negotiations.

*Board* means the Hernando County Board of County Commissioners.

*Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

*Competitive award* means an award of a contract based on the submission of sealed bids, proposals submitted in response to a request for proposals, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation.

*Competitive negotiations* means a solicitation for responses for a good and/or service where the competitive award may be based on negotiations with competitors submitting bids in response to a request for proposals or a request for qualifications.

*Competitive solicitation* means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive bidders in accordance with the terms of a competitive process, regardless of the method of procurement, e.g. invitation to bid, request for proposals, request for qualifications, etc.

*Chief procurement officer* means the person holding the position created in Hernando County Code section 2-104 (creation of the office of the chief procurement officer) as the head of the central procurement office of the county.

*Construction* means the process of building, altering, repairing, improving, or demolishing any structure, building, road, bridge, sidewalk, drainage facility, water distribution system, sewer collection system, water or sewer treatment plant, or other improvements of any kind to any real property. It does not include the routine operation, repair or maintenance of existing structures, buildings or real property.

*Consultant services* means any narrow discipline wherein a known practitioner has, through education and experience, developed expert advisory and programming skills as a vocation; any service performed primarily by vocational personnel which requires the analysis or certification of a professional before the services are acceptable to the user of the services; or any other advisory, study, or programming activity. For the purposes of this article, the term "consultant services" does not include those services defined and prescribed under Florida Statute 287.055.

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*Contract* is used in a legal sense and means a promissory agreement between two (2) or more parties that creates, modifies or destroys a legal relation. It includes all types of county agreements regardless of what they may be called, for the purchase or disposal of goods or services or performance of construction with the following exceptions: Salaries/employee benefits, taxes, judgements, travel, dues, pensions, utilities, subscriptions, debt service requirements, and postage. It includes contracts for a fixed price, cost, cost plus a fixed fee, or incentive contracts, contracts providing for issuance of job or task orders, leases, letter contracts and purchase orders.

*Contract modification* means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract or purchase order accomplished by mutual action of the parties to the contract.

*Data* means recorded information, regardless of form or characteristic.

*Designee* means a duly authorized representative of a person holding a superior position.

*Electronic* means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

*Electrical utility services* means the generation, transmission, distribution (including the furnishing of labor, time and effort to provide same), and the sale of, electricity to customers by an electrical utility that owns, maintains, or operates an electric generation, transmission or distribution system and that is regulated by Chapter 366 of Florida Statutes.

*Emergency purchase* means a procurement of goods and/or services made in response to a requirement when the delay incident to complying with all governing rules, regulations, and/or procedures would be detrimental to the health, safety and welfare of the county and/or its citizens.

*Goods* means any tangible personal property other than services or real property.

*Invitation to bid* means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

*Lease* means a contract where one party (lessee) has use and possession of an asset owned by another party (lessor) for a specified period of time for a monetary payment. Under a straight lease contract, title of the asset remains with the owner.

*Lease/purchase* means a lease contract where, upon completion of the specified lease period, in consideration of the monies paid during the term of the lease agreement or an additional buyout payment, title to the leased asset passes to the lessee.

*Local business* means a vendor or contractor who does business in Hernando County by providing goods, services, or construction, and who maintains a physical business address located within the jurisdictional limits of Hernando County in an area zoned for the conduct of such business from which the vendor or contractor operates or performs business on a day-to-day basis, and has for at least twelve (12) months prior to bid or proposal opening date. Post office boxes shall not be used for the purpose of establishing said physical address.

*May* denotes the permissive.

*Must* denotes the imperative.

*Personal property* means all tangible property which is not real estate, land, buildings or fixtures on land or buildings. Personal property includes, without limitation, all goods, materials, supplies, equipment and vehicles owned, leased or used by the county.

*Procurement* means buying, purchasing, renting, leasing or otherwise acquiring any goods and/or services for public purposes in accordance with the laws, rules, regulations and procedures pertaining to the economic expenditure of public funds. It includes, but is not limited to, all functions which pertain to the obtaining of any supplies, materials, equipment and/or services, including construction projects, as defined herein, required by any

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department or agency of county government regardless of the source of funds or for which payment is made from county funds.

*Professional services* means architectural, engineering, landscape architectural, and registered land surveying services, as defined and prescribed under Florida Statute § 287.055.

*Protest* means a challenge, lodged in accordance with the County's protest procedures and policies, to a competitive solicitation including the solicitation, notice of intent to award, or award of a contract.

*Public notice* means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation in the county, electronic or paper mailing lists, and web site(s) designated by the county and maintained for that purpose.

*Purchase order* means the county's contract document used to authorize the purchase of personal property or services.

*Purchasing agency* means any governmental employee or body other than the Chief Procurement Officer which is authorized by this Ordinance or its implementing regulations, or by way of delegation from the Chief Procurement Officer, to enter into contracts.

*Real property* means, generally, real estate, including land, the buildings and other fixed improvements on the land, all objects growing on the land, and all other objects which are reasonably considered to be affixed to the land.

*Request for proposals (RFP)* means a solicitation for responses for a good and/or service for which the scope of work, specifications or contractual conditions cannot reasonably be closely defined. Evaluation of a proposal is based on prior established criteria wherein the RFP shall state the relative importance of price and other evaluation factors.

*Request for qualifications* means a solicitation for responses for services for which the competitive award will be based on the qualifications of the responding bidders. Request for qualifications shall be used in the solicitation for, but not be limited to, professional services, design build services and construction management services.

*Regulation* means a government body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements, which has been promulgated in accordance with applicable law.

*Responsible bid/bidder* means an individual, partnership, firm, association, corporation or business which has submitted a bid, offer, proposal, quote, or response, which has the capability, as determined by the county, in all respects to fully perform the contract requirements, and the integrity and reliability which give reasonable assurance of good faith and performance.

*Responsive bid/bidder* means an individual, partnership, firm, association, corporation or business which has submitted a bid, offer, proposal, quote, or response, which, as determined by the county, conforms in all material respects to a competitive solicitation.

*Services* means the furnishing primarily of labor, time, and/or effort.

*Shall* denotes the imperative.

*Sole source* means the only existing source of the required item which meets the needs of the county, as determined by a reasonably thorough analysis of the marketplace.

*Specification(s)* means a concise statement of a set of requirements to be satisfied by a product, material, service or process used in a competitive solicitation for bid or request for proposal to describe the goods and/or service to be purchased or otherwise acquired.

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*State contract* means a current, valid, continuing or term contract or agreement which has been publicly bid or negotiated by a department, division or agency of the State of Florida.

*Supplies* means all property including, but not limited to, equipment, materials, printing, insurance, and leases, but excluding land or permanent interest in land.

*Vendor* means an actual or potential supplier of a good and/or service.

*Written or in writing* means the product of any method of forming characters on paper, other materials, or viewable screen, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

(Ord. No. 93-16, § II(G), 7-13-93; Ord. No. 02-23, § I, 12-17-02; Ord. No. 2011-3, § 1, 1-11-11; Ord. 2013-23, § 1, 7-23-13)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

### **Sec. 2-103. Organization; centralization of procurement authority.**

Except as otherwise provided in this article, all rights, powers, duties, and authority relating to the procurement and contracting for supplies, materials, equipment, contractual services, professional and consultant services, construction and/or combinations of goods and services governed by this article shall reside with the office of the chief procurement officer.

(Ord. No. 93-16, § III(A), 7-13-93; Ord. No. 02-23, § I, 12-17-02)

### **Sec. 2-104. Chief procurement officer.**

- (a) *Creation of office.* There is hereby created the office of the chief procurement officer.
- (b) *Appointment.* Pursuant to a recommendation by the county administrator, the board shall designate a full-time employee of the county to serve as the chief procurement officer.

(Ord. No. 93-16, § III(B), 7-13-93; Ord. No. 02-23, § I, 12-17-02; Ord. No. 2011-3, § 2, 1-11-11)

### **Sec. 2-105. Same—Duties.**

The chief procurement officer shall:

- (1) Administer the central purchasing and contracting system for the county;
- (2) Upon request of any constitutional officer of the county, make available to such officer the services provided herein subject to the terms of this article and any administrative policies and internal procedures of the procurement department;
- (3) Provide for the establishment/promulgation of administrative policies and procedures of purchasing and contracts which shall be forwarded through the county administrator for review and approval prior to adoption by the board of county commissioners;
- (4) Provide the county administrator and/or the board of county commissioners, with data or information concerning county purchasing and contracting;
- (5) Report to the county administrator and/or county attorney any violation or suspected violation of any federal, state, or local law, rule or regulation, as related to the procurement of goods and/or service subject to the county purchasing ordinance, committed by an employee or agent of the county or an

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independent contractor which creates or presents a substantial or specific threat to the integrity of the county purchasing and contracting practices;

- (6) Standardize, to the extent possible, contract clauses, terms, conditions and documents; and,
- (7) Perform other duties as directed by the administrator of the county.

(Ord. No. 93-16, § III(C), 7-13-93; Ord. No. 02-23, § I, 12-17-02)

### **Sec. 2-106. Same—Authority.**

All rights, powers, duties and authority relating to the procurement and contracting of goods and/or services for the board of county commissioners, including the authority to approve purchases and sign those agreements, contracts, and purchase orders for the purchase of goods and/or services in accordance with the provisions of section 2-109 below, provided they are in conformance with the law and applicable rules and regulations, are vested in the chief procurement officer.

(Ord. No. 93-16, § III(D), 7-13-93; Ord. No. 02-23, § I, 12-17-02)

### **Sec. 2-107. Same—Delegation of authority by.**

The chief procurement officer may delegate rights, powers, and authority vested in him/her to subordinate purchasing and contracts staff, or other county staff, when deemed necessary and prudent, provided such staff shall comply with all applicable laws, regulations, rules and procedures established by the county.

(Ord. No. 93-16, § III(E), 7-13-93; Ord. No. 02-23, § I, 12-17-02)

### **Sec. 2-108. Bidding procedures.**

- (a) *Soliciting bids for construction, purchase and leasing.* By advertisement at least once in a newspaper of general circulation in the county no later than two (2) weeks prior to opening of bids, or as required by law, the board of county commissioners shall solicit competitive bids for the construction by non-county personnel of any road, street, sidewalk, drainage facility, water distribution system, sewer collection system, water or sewer treatment plant, or building, or the purchase and/or leasing of goods, supplies, materials or nonprofessional services for county use, when the amount to be paid for such construction, purchase or lease is reasonably expected to exceed \$50,000.00, exclusive of freight or other delivery charges.
- (b) *Acceptance, rejection and competitive award of bids and proposals.* The board shall accept the best and lowest responsible and responsive bid for the award of a competitively solicited contract but the board may, at its discretion, reject all bids or accept bid item(s) covering less than the entire solicitation if the items bid upon are reasonably severable from the remainder of the contract. The board may reject any bidder found by the board not to be responsible or otherwise unable to perform satisfactorily all provisions of the contract. Where the board rejects any bidder, such finding is presumed to have been made by the board prior to the rejection.
- (c) *Exceptions to bidding requirements.* Competitive solicitation of bids is not required in the following instances:
  - (1) Where the board declares by a majority vote of the board of county commissioners that an emergency exists.
  - (2) The purchase and/or leasing of goods, supplies, materials or services for county use from a valid current continuing state contract or from other valid current continuing contracts with the State of

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Florida or other local governments or similar entities, including but not limited to associations acting on behalf of state, county or municipal officials.

- (3) Where the board finds that there is a reasonable certainty that bids for the contemplated construction or purchase will be offered by only one (1) bidder. The board may use as a basis for this finding a recommendation of the county administrator through the consent agenda, or otherwise as may be determined, that the particular contract is expected to draw bids from only one (1) bidder.
- (4) Where, in the business judgment of the board as declared by majority vote plus one (1) of the board of county commissioners, the particular circumstances or time constraints surrounding the construction or purchase make it impractical or inadvisable to solicit bids.
- (5) Where the contract to be bid upon is one for the purposes authorized by section 336.41, Florida Statutes, as amended from time to time. Such contracts to be bid upon shall be subject to any bidding requirements imposed by general law.
- (6) Where the board by majority vote plus one of the board of county commissioners has by resolution waived competitive bidding when it finds this to be in the best interest of the county.
- (7) Where there has previously been a request for bids and no responsive, responsible bids have been received.

(Ord. No. 93-16, § IV, 7-13-93; Ord. No. 97-23, § 1, 11-4-97; Ord. No. 02-23, § I, 12-17-02)

#### **Sec. 2-109. Approval and execution of contracts.**

- (a) All contracts for the construction by non-county personnel of any road, street, sidewalk, drainage facility, water distribution system, sewer collection system, water or sewer treatment plant, or building, or the purchase, lease or lease-purchase of goods, supplies, materials or nonprofessional services in an amount exceeding \$50,000.00 , and all contracts for professional services equal to or exceeding the limits imposed by the "Consultants' Competitive Negotiation Act", section 287.055, Florida Statutes, as it may be amended from time to time, shall be approved by the board at a public meeting. Any contract approved by the board may be executed by the chairman of the board of county commissioners or by any other county official, department head, or employee so designated by resolution of the board to execute the contract approved by the board.
- (b) The chief procurement officer is hereby authorized to approve and execute contracts for the construction by non-county personnel of any road, street, sidewalk, drainage facility, water distribution system, sewer collection system, water or sewer treatment plant, or building, or the purchase and/or leasing of goods, supplies, materials or nonprofessional services in an amount equal to or less than \$50,000.00, and all contracts for professional services in an amount less than the limits imposed by the "Consultants' Competitive Negotiation Act", section 287.055, Florida Statutes, as it may be amended from time to time.

(Ord. No. 93-16, § V, 7-13-93; Ord. No. 97-23, § 1, 11-4-97)

#### **Sec. 2-110. Repeal of laws in conflict.**

- (a) All purchases of goods, supplies, materials, equipment, machinery, construction or services by the county, any county official, board, department head or employee made during the period of time from the repeal of Ordinance No. 82-3, until the effective date of this article, be and the same hereby are ratified, validated and confirmed.
- (b) All resolutions, ordinance and special acts of the legislature pertaining to the county, contrary to the provisions of this article, are hereby repealed.



**Sec. 2-111. Local bidder or procurement preference.**

(a) *Local preference in purchasing and contracting.*

- (1) In bidding for, or letting contracts for procurement of, supplies, materials, equipment, and services, as described in the purchasing policies of the county, the board of county commissioners may give a preference to local businesses in making purchases or awarding contracts in an amount not to exceed:
  - a. Five (5) percent of the local business' total bid price if the cost differential does not exceed ten thousand dollars (\$10,000.00) for procurement activities in amounts over fifty thousand dollars (\$50,000.00)
  - b.
- (2) The total bid price shall include not only the base bid price, but also all alterations to the base bid price resulting from alternates which were both part of the bid and actually purchased or awarded by the board of county commissioners.
- (3) In the case of requests for proposals or qualification, letters of interest, or other solicitations and competitive negotiations and selections in which objective factors are used to evaluate the responses, local businesses shall be assigned five (5) percent of the total points of the total evaluation points.

(b) *Exceptions to local preference policy.*

- (1) The procurement preference set forth in this article shall not apply to any of the following purchases or contracts:
  - a. Goods or services provided under a cooperative purchasing agreement or interlocal agreement;
  - b. Contracts of professional services, the procurement of which is subject to the Consultants' Competitive Negotiation Act or subject to any competitive consultant selection policy or procedure adopted or utilized by the board of county commissioners;
  - c. Purchases or contracts which are funded, in whole or in part, by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference;
  - d. Purchases made or contracts let under emergency or noncompetitive situations, or for litigation related legal services, etc.; or
  - e. Purchases with an estimated cost of less than ten thousand dollars (\$10,000.00) or less.
- (2) Application of local preference to a particular purchase, contract, or category of contracts for which the board is the awarding authority may be waived upon written justification and recommendation by the county administrator, and approval of the board.
- (3) The preference established in this section does not prohibit the right of the board to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms, or corporations submitting bids or proposals.
- (4) The bid preference established in this section does not prohibit the board from giving any other preference permitted by law in addition to the preference authorized in this section.

(c) *Application and enforcement of preference policy.* The local preference policy established in this section shall apply to new contracts and procurements solicited after the effective date of this section.

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- (d) *Promulgation of rules.* The county administrator is hereby authorized to adopt administrative rules supplemental to the provisions of this section as deemed necessary and appropriate to implement the provisions of this section.
- (e) *Conflicts.* If provisions of other ordinances conflict with any of the provisions of this section, the provisions of this section control as the prevailing provisions.

(Ord. 2013-23, §§ 2—6, 7-23-13)

## DIVISION 2. – COMPETITIVE SOLICITATION PROTESTS

### **Sec. x-xx. Authority**

The provisions of this article are based upon the authority granted to the Board of County Commissioners of Hernando County, Florida, in Chapters 125 and 287, Florida Statutes.

(Ord. 1993-16, § 2(C))

### **Sec. x-xx. Responsibility for promulgating protest procedures and policies**

The chief procurement officer shall promulgate the administrative procedures and policies for protests of lodged by bidders or potential bidders. The chief procurement officer shall forward the proposed protest procedures and policies to the County Administrator for review and approval. If approved, the County Administrator shall present same to the Board for approval and adoption. If adopted, the protest policies and procedures shall be incorporated in the Hernando County Procurement Manual.

(Ord. 2002-23, §§ 2-105 and 2-106, 12-17-02)

### **Sec. x-xx. Requirement to follow protest procedures and policies**

Protests of Hernando County competitive solicitations are governed by this ordinance. A bidder or potential bidder that lodges a protest shall follow the protest procedures and policies provided in the Hernando County Procurement Manual. Failure to follow said protest procedures and policies constitutes a waiver of protest proceedings.

### **Sec. x-xx. Applicability of Administrative Procedure Act**

The chief procurement officer may, at his or her discretion subject to approval by the County Administrator and the Board, incorporate in the protest procedures and policies any sections of the Administrative Procedure Act<sup>2</sup> that comport with this ordinance and the best interests of the County.<sup>3</sup>

### **Sec. x-xx. Access to the Hernando County Procurement Manual**

The chief procurement officer shall ensure that the up-to-date version of the Hernando County Procurement Manual is available to the public on the County's website.

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<sup>2</sup> Chapter 120, Fla. Stat. (2023)

<sup>3</sup> § 287.001, Fla. Stat. (2023)