

ORDINANCE 13-47

**AN ORDINANCE OF MANATEE COUNTY, FLORIDA,
RELATING TO PROCUREMENT; AMENDING SECTION
2-26-40 OF THE MANATEE COUNTY CODE TO PROVIDE
FOR WAIVER OF COMPETITIVE SOLICITATION IN
CERTAIN CIRCUMSTANCES; PROVIDING FOR
CODIFICATION AND SEVERABILITY; AND PROVIDING
AN EFFECTIVE DATE.**

Whereas, Manatee County has codified its various procurement regulations in Chapter 2-26 of the Manatee County Code (the Code); and,

Whereas, the County administration and County Attorney's Office regularly note potential revisions to the Code which will improve efficiency, enhance integrity or better ensure legal compliance in the County's procurement activities; and,

Whereas, Section 2-26-40(c) of the Code currently allows the County Administrator, upon a determination that the likely, non-speculative cost of competitive purchasing would exceed any potential savings and benefit to the county or that the acquisition of the goods or services should be provided by a unique source or provider based upon particular skills and expertise, to approve a limited or complete waiver of competitive selection for procurement actions between Category 1 and Category 3 (up to \$250,000); and,

Whereas, the County's administration has determined that circumstances can on rare occasions exist wherein the waiver of competition for Category 4 or 5 procurement actions would make sense, and has therefore requested the adoption of a method for approving the limited or complete waiver of competition in such cases; and,

Whereas, the Board of County Commissioners of Manatee County agrees that a method for approving waivers of competition for Category 4 or 5 procurement actions in limited circumstances can result in substantial savings of time and/or resources; and,

Whereas, the Board of County Commissioners of Manatee County finds that the provisions of this Ordinance are in the best interests of the County, its citizens, taxpayers and business community.

NOW THEREFORE BE IT ORDAINED by the Board of County Commissioners of Manatee County:

Section 1. Section 2-26-40(c) of the Manatee County Code is hereby amended as follows:

Sec. 2-26-40. Policies and procedures.

(c) Where not otherwise prohibited by law, the county administrator is authorized to provide for the limited or complete waiver of competitive source selection policies and procedures for category 1 through 3 purchases, as those categories are defined by the county commission, upon a determination that the likely, non-speculative cost of competitive purchasing would exceed any potential savings and benefit to the county or upon a determination that the acquisition of the goods or services should be provided by a unique source or provider based upon particular skills and expertise. Waivers may also be authorized for any purchasing category where required under emergency conditions. All such determinations shall be made in writing, with copies provided to the county commission and county attorney's offices. In the event the county commission determines for category 4 or 5 purchases that the likely, non-speculative costs of competitive purchasing would exceed any potential savings and benefit to the county, or that such a process would likely result in substantial financial loss to the county, or that the acquisition of the goods or services should be provided by a unique source or provider based upon particular skills and expertise, the commission may, upon the request of the county administrator, grant a limited or complete waiver of competitive source selection policies and procedures.

Section 2. If any section, subsection, sentence, clause, provision or word of this Ordinance is held invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity. The Manatee County Board of County Commissioners expressly indicates that it desires any remainder of the Ordinance to withstand any severed provision, as it would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 3. For purposes of codification of any section of the Manatee County Code herein amended, words **underlined** represent additions to original text, and words **~~stricken~~** are deletions from the original text.

Section 4. The Codifier shall codify the substantive amendments to the Manatee County Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify any other sections not designated for codification.

Section 5. This Ordinance shall take effect immediately upon filing with the Department of State.

DULY ADOPTED in open session with a quorum present and voting this 3rd day of December, 2013.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

ATTEST: R.B. SHORE
Clerk of the Circuit Court

By: *Chibi Jesson*
Deputy Clerk

By: *Larry Bustle*
Chairperson





FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

December 13, 2013

Honorable R. B. "Chips" Shore
Clerk of the Circuit Court
Manatee County
Post Office Box 25400
Bradenton, Florida 34206

Attention: Robin Liberty, Deputy Clerk

Dear Mr. Shore:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Manatee County Ordinance No. 13-47, which was filed in this office on December 13, 2013.

Sincerely,

Liz Cloud
Program Administrator

LC/elr

Enclosure

From: [Ords Admin](#)
To: [Steviemarie Snyder](#)
Subject: RE: Manatee County, FL Code of Ordinances - 1981(10428) and Land Development Code - 1990(12202)
Date: Friday, April 25, 2014 11:14:35 AM

We have received your files. Thank you for your submission.

Respectfully,
Ords Administrator
ords@municode.com
1-800-262-2633
(850) 576-3172
Fax No. 850-575-8852
P.O. Box 2235
1700 Capital Circle, S.W.
Tallahassee, FL 32317-2235
When available, please send all documents in WORD format to Ords@municode.com.
However, if WORD format is not available, we welcome any document format including PDF.

sha

Ask me about 



From: Steviemarie Snyder [mailto:Steviemarie.Snyder@ManateeClerk.com]
Sent: Thursday, April 24, 2014 11:40 AM
To: Ords Admin
Subject: Manatee County Ordinance 13-047

Good Morning,

Please find Manatee County Ord. 13-047 which was adopted on 12/03/13. If you have any questions, please let us know.

Thank you,

Steviemarie Snyder
Board Records
For R.B "Chips" Shore
Manatee County Clerk of the Circuit Court & Comptroller
www.ManateeClerk.com
steviemarie.snyder@manateeclerk.com
941-749-1800 x 4018

From: ords@municode.com
To: robert.eschenfelder@mymanatee.org; [Steviemarie Snyder](#)
Subject: Manatee County, FL Code of Ordinances - 1981 (10428) Supplement 92
Date: Saturday, April 26, 2014 11:38:21 AM
Attachments: [ATT00001.bin](#)
[ATT00002.bin](#)

****THIS IS AN AUTOMATICALLY GENERATED EMAIL****

Below, you will find the material that we have received/recorded to your account. This material is being considered for inclusion in your next/current update, Supplement 92

Document	Adopted Date	Recorded	Recorded Format
Special Instructions of 1-30-14		1/30/2014	Word
Ordinance No. 13-35	10/22/2013	10/30/2013	Word
Ordinance No. 13-39	1/7/2014	1/14/2014	Word
Ordinance No. 13-47	12/3/2013	4/26/2014	PDF
Ordinance No. 14-05	1/7/2014	1/14/2014	Word
Ordinance No. 14-06	1/29/2014	2/19/2014	PDF
Ordinance No. 14-09	1/29/2014	2/4/2014	PDF
Ordinance No. 14-12		3/12/2014	Word
Ordinance No. 14-15	4/8/2014	4/10/2014	Word
Ordinance No. 14-19		3/12/2014	Word
Ordinance No. 14-25	4/8/2014	4/10/2014	Word



Update the internet version of your Code more often than a printed supplement. We can update the Internet quarterly, monthly, even weekly.



We can post newly enacted ordinances in the online Code after each meeting.

RESOLUTION 13-215

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, GRANTING A WAIVER OF COMPETITIVE SOLICITATION FOR THE PROCUREMENT OF A BEACH RENOURISHMENT PROJECT; MAKING RELATED FINDINGS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Manatee County Code § 2-26-40(c), as amended through Ordinance 13-47, authorizes the County Commission to grant a waiver of competitive source selection policies and procedures for category 4 or 5 purchases where it finds the use of a competitive process would likely result in substantial financial loss to the county; and,

WHEREAS, the County Administrator has informed the County Commission of unique factual circumstances related to the County's capital improvement project related to the County's portion of the beach renourishment project known as the Anna Maria Island Shore Protection Project (the Project); and,

WHEREAS, these facts include that the federal government has, through a competitive process, engaged the services of the Great Lakes Dredge and Dock Company (the contractor) to perform its portion of the Project and therefore has or will pay for the contractor's mobilization costs; and,

WHEREAS, County staff indicate that mobilization costs constitute a majority of the expenses incurred by dredging contractors in any major beach renourishment project; and,

WHEREAS, the County has intended, within its Capital Improvement Plan process and with planned funding assistance from the State and federal governments, to perform its own complimentary renourishment (known internally as the Coquina Beach phase of the Project); and,

WHEREAS, if the County directly contracts with the contractor to perform this work, it will avoid paying mobilization costs any other dredging contractor able to do this type of beach renourishment would need to include in a response for requests for bids, which could be between \$3 and \$5 million dollars; and

WHEREAS, the share of savings in avoiding paying mobilization costs the County will realize by directly contracting with the already-mobilized contractor is expected to exceed \$1 million dollars; and,

WHEREAS, directly contracting with the already-mobilized contractor to begin the County's portion of the Project when it completes the federal portion will allow the County's portion of the Project to be completed in a more timely manner, and will avoid disrupting area boaters, residents and businesses multiple times; and,

WHEREAS, while as a general rule the County favors competitive selection of contractors, these unique factors, including the fact that the contractor was initially selected by the federal government using a competitive selection process, very strongly justify the granting of a waiver of the County's competitive selection procedures:

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Manatee County, Florida, that:

1. Pursuant to Manatee County Code § 2-26-40(c), as amended through Ordinance 13-47, the County Commission hereby authorizes the waiver of the County's competitive solicitation rules and procedures as would otherwise apply to that certain County capital improvement project known as the Coquina Beach Phase of the Anna Maria Island Shore Protection Project.
2. The County Administrator and Purchasing Official are authorized to undertake direct negotiations with the Great Lakes Dredge and Dock Company for the performance of this County project after it completes the related federal project and prior to demobilizing. Since the project cost would fall within Category 5, any final agreement reached by the parties shall be submitted to the County Commission for approval.
3. If negotiations are unsuccessful, the County shall utilize all applicable competitive solicitation rules and procedures to obtain bids for the completion of the project.

BE IT FURTHER RESOLVED that any existing Resolution or portion thereof of the Board of County Commissioners which contains terms or provisions which are in direct conflict with and cannot be harmonized with the provisions of this Resolution shall, as to such terms or provisions, be deemed as superseded by this Resolution.

BE IT FURTHER RESOLVED that the provisions of this Resolution are severable such that the invalidity of any one provision shall not operate to invalidate any other provision.

BE IT FURTHER RESOLVED that this Resolution shall become effective upon the effective date of Manatee County Ordinance 13-47.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Manatee County, Florida, with a quorum present and voting, this 3rd day of December, 2013.

ATTEST:
R.B. SHORE
CLERK OF THE CIRCUIT COURT

By: *Robin Shore*
Deputy Clerk



BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

By: *Larry Butler*
Chairperson

BRADENTON HERALD

WWW.BRADENTON.COM
P.O. Box 921
Bradenton, FL 34206-0021
102 Manatee Avenue West
Bradenton, FL 34205-8894
941.745.7077

Bradenton Herald
Published Daily
Bradenton, Manatee County, Florida

STATE OF FLORIDA COUNTY OF MANATEE

Before the undersigned authority personally appeared Flo Konesko, who, on oath, says that she is a Legal Advertising Representative of The Bradenton Herald a daily newspaper published at Bradenton in Manatee County, Florida; that the attached copies of the advertisement, being a Legal Advertisement in the matter of **NOTICE OF PUBLIC HEARING** in said newspaper in the 11/23/2013.

Affidavit further says that the said publication is a newspaper published at Bradenton, in said Manatee County, Florida, and that the said newspaper has heretofore been continuously published in said Manatee County, Florida, each day and has been entered as second-class mail matter at the post office in Bradenton, in said Manatee County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement, and affiant further says that she has full and complete authority to execute this affidavit for the purpose of certifying the advertisement for publication in the said newspaper.


(Signature of Affiant)

Sworn to and subscribed before me this

23 NOV 2013




SEAL & Notary Public

Type of Identification Produced

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN, pursuant to Section 125.66(2)(a), Florida Statutes, that the Board of County Commissioners of Manatee County, Florida, will conduct a public hearing on Dec. 3, 2013 beginning at 9:00 a.m., or as soon thereafter as possible, in the Commission Chambers, located on the 1st Floor of the Manatee County Administrative Center, 1112 Manatee Avenue West, Bradenton, Florida, to consider the following:

ORDINANCE 13-47

AN ORDINANCE OF MANATEE COUNTY, FLORIDA, RELATING TO PROCUREMENT; AMENDING SECTION 2-26-40 OF THE MANATEE COUNTY CODE TO PROVIDE FOR WAIVER OF COMPETITIVE SOLICITATION IN CERTAIN CIRCUMSTANCES; PROVIDING FOR CODIFICATION AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Copies of the proposed Ordinance may be inspected by the public during normal business hours in the Office of the County Attorney, 1112 Manatee Avenue West, Suite 969, Bradenton, Florida. Interested parties may appear at the meeting or public hearing and be heard with respect to the proposed ordinance.

According to Section 286.0105, Florida Statutes, any person desiring to appeal any decision made by the Board of County Commissioners with respect to any matter considered at the above-referenced meeting or public hearing will need a record of the proceedings, and, for such purposes, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
11/23/2013

REVISED December 3, 2013 - Regular Meeting
Agenda Item #27

Subject

Ordinance Amending Purchasing Code and Resolution Granting Waiver

Briefings

All

Contact and/or Presenter Information

Charlie Hunsicker, Director
Parks and Natural Resources Department
X6001
charlie.hunsicker@mymanatee.org

Robert M. Eschenfelder, Assistant County Attorney
County Attorney's Office
X3750
robert.eschenfelder@mymanatee.org

Action Requested

Motion to adopt Ordinance 13-47 and to adopt Resolution 13-215

Enabling/Regulating Authority

Florida Statutes Chapter 125 (home rule authority) and Manatee County Code Chapter 2-26 (the Purchasing Code)

Background Discussion

- Manatee County Procurement Code 2-26-40 allows the County Administrator to waive competitive negotiation requirements for certain categories of purchases in amounts up to \$250,000 given certain extraordinary conditions as stated in the ordinance. At present, Section 2-26-40 provides no other procedure or exception to competitive negotiations to secure services in amounts greater than \$250,000. Manatee County is well positioned to obtain a competitive price through direct negotiation with the beach renourishment vendor, Great Lakes Dredge and Dock Company, who was competitively selected through a formal bid conducted by the Army Corps of Engineers and who will be mobilized on Anna Maria beaches during the months of December, January and February to complete the federal beach renourishment project immediately adjacent to Manatee County's beach renourishment project on Coquina Beach. Based upon the engineering cost estimate for these services, it is anticipated that the cost of service will exceed \$250,000. The purpose of amending the Ordinance is to provide for a mechanism for Board approval of noncompetitive procurement requests; based on the finding that (1) the costs of the competitive procurement are greater than the savings expected to be realized through a negotiated agreement or (2) upon a determination that the acquisition of the goods or services should be provided by a unique source due to possession of a specific skill or expertise; or (3) consideration of other important factors such as feasibility, practicality, geographic availability or cost effectiveness.

- The project is for beach nourishment that involves dredging 260,000 cubic yards of sand from an identified offshore borrow area at the north end of Anna Maria Island, transport of the material by means through several miles of pipeline, and placement and grading of that material within a defined template at Coquina Beach. The process is highly specialized and requires large equipment such as an oceangoing dredge, booster pump, miles of steel pipe, bulldozers and other specialized support equipment. Due to the nature and scope of the project, there is a very small number of contractors that have the capacity and capability to perform the work.
- The vendor being sought for this Non-Competitive Procurement Request, Great Lakes Dredge and Dock Company. LLC (GLLD), will be in place for another beach nourishment project on Anna Maria Island under contract with the U.S. Army Corps of Engineers (USACE). GLLD was awarded the USACE contract by competitive bid with federal protocols for the nourishment of Anna Maria Island. The contract has been awarded and GLDD is expected to commence work on the island in December 2013 with completion in January 2014. The USACE project will terminate at the north end of Coquina Beach, which provides the County a unique opportunity to secure a contract with GLDD at a highly discounted rate considering their pre-position and competitive advantage over all other vendors who would be required to mobilize equipment and personnel at an added cost of millions of dollars.
- The price of the work will be determined by direct negotiation with the vendor. The existing contract that the vendor has with the USACE will be used as the basis of negotiation for the initial offer.
- If the ability to enter into direct negotiations and subsequent approval by the Board is not approved, the consequence would have a financial impact of approximately \$2,900,000. This is the actual "sunk" mobilization cost that the vendor already has covered by the USACE contract that presumably would be recoverable by this vendor or any other if the project is proposed in a fully competitive environment under a new competitive bid procedure. In addition, the project construction would be delayed or canceled, which has the potential consequence of putting the residents of Anna Maria Island at risk for storm damage to the hurricane evacuation route along Gulf Drive at Coquina Beach.

County Attorney Review

Formal Written Review (Opinion memo must be attached)

Explanation of Other

Reviewing Attorney

Eschenfelder

Instructions to Board Records

Provide copy of executed Ordinance and Resolution to Melissa Wendel, melissa.wendel@mymanatee.org, x3056.

Cost and Funds Source Account Number and Name

N/A

Amount and Frequency of Recurring Costs

N/A

Attachment: [RLS 13-301 Ordinance Related to Waiver of Competition for Category 4 and 5 Purchases.pdf](#)

Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - December 3, 2013

Attachment: [Resolution 13-215.pdf](#)

Attachment: [Ordinance 13-47.pdf](#)



Office of
**MANATEE COUNTY
ATTORNEY**

Mitchell O. Palmer, County Attorney*

James A. Minix, Chief Assistant County Attorney
Maureen S. Sikora, Assistant County Attorney**
Robert M. Eschenfelder, Assistant County Attorney
William E. Clague, Assistant County Attorney
James R. Cooney, Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney**
Andrea A. Adibe, Assistant County Attorney

MEMORANDUM

DATE: November 22, 2013

TO: Charlie Hunsieker, Parks & Natural Resources Director

THROUGH: Mitchell O. Palmer, County Attorney *[Signature]*

FROM: Robert Michael Eschenfelder, Assistant County Attorney *[Signature]*

RE: **Ordinance Related to Waiver of Competition for Category 4 and 5 Purchases (Request for Legal Services 13-301)(CAO File: 1090-257)**

In **URGENT** RLS 13-301 (submitted November 21) you indicate that Manatee County has a beach renourishment project to be performed and has budgeted for a large portion of the project in its CIP. The State and federal governments have also designated certain funds to partner with the County in this County-led project. You further indicate that the federal government has contracted for a separate but related multi-million dollar beach renourishment project off the coast of Manatee County set to begin in the first week of December.

The County has typically sought competitive bids for beach renourishment projects. However, since there will be a contractor already mobilized and working off the coast of the County, and inasmuch as the cost of mobilization is a major component to any renourishment project, you state that it is unlikely any of the few other companies in the United States performing this type of work would be able to perform as quickly as the already-mobilized contractor, or to be able to quote a price anywhere near as low as the County is likely to get from the already-mobilized contractor.

*Board Certified in Construction Law

** Board Certified in City, County & Local Government Law

Therefore, your department strongly desires to waive competition and contract directly with this mobilized contractor, so that when it is completed with the federal project (expected sometime in February 2014), it can simply remain in place and begin the County project. It is expected that the County's CIP fund's share of savings by avoiding mobilization costs would be in excess of \$1 million, an obvious significant gain to the County.

However, upon consulting with the Purchasing Official and County Attorney's Office, you were advised that the current County Purchasing Code's authorization to grant a waiver of competition in cases where there will be no monetary gain in doing so only extends through Purchasing Category 3. Since this CIP project is expected to cost in excess of \$1 million (even with the expected mobilization cost savings), it will fall within Category 5. Your department therefore requests, with the support of the County Administrator and Purchasing Official, the drafting of an ordinance amending the Code to allow the County Commission to waive the competitive bidding requirement in rare cases such as this. Given the need to expedite negotiations with the contractor and the pending holiday break, it is important to have the ordinance and resolution ready for presentation to the Commission at its December 3 meeting.

Per your request, I have drafted the attached Ordinance 13-47 creating the avenue through which approvals for waivers of competition in rare cases such as this may be requested and approved by the Commission. I advise that the Ordinance is in sufficient legal form so as to be presented to the County Commission for consideration and adoption.

I trust this adequately responds to the request for service. If there are any questions, please feel free to contact our Office.

copies to: Ed Hunzeker, County Administrator
 Karen Windon, Deputy County Administrator
 Dan Schlandt, Deputy County Administrator
 Melissa Wendel, Purchasing Official