

**CERTIFIED RESOLUTIONS OF THE BOARD OF DIRECTORS
OF ELLIOTT RANCH HOMEOWNERS ASSOCIATION, INC.
ADOPTION OF CONTRACT PROCUREMENT POLICY**

The undersigned, Donna Courtright as the duly elected, qualified, and acting Secretary of Elliott Ranch Homeowners Association, Inc., a Texas nonprofit corporation (the “**Association**”), hereby certifies on behalf of the Association that the following resolutions were duly adopted by the Board of Directors of the Association (the “**Board**”) at a meeting of the Board held on December 15, 2021, and that such preamble and resolutions have not been amended or rescinded and are in full force and effect on the date hereof.

WHEREAS, Chapter 209.0052 of the Texas Property Code (the “**Code**”) requires the Association to solicit bids or proposals using a bid process established by the Association for the procurement of any proposed contract for services that will cost more than \$50,000; and

WHEREAS, the Board desires to adopt a contract procurement policy establishing a bid process for the solicitation of bids and proposals for the purpose of complying with the Code.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the contract procurement policy set forth on Exhibit “A”, attached hereto and incorporated herein by reference.

BE IT RESOLVED, FURTHER, that, the Secretary of the Association is hereby authorized and empowered, in the name and on behalf of the Association, from time to time, to do and perform all such further acts and things and to execute and deliver all such further instruments as he or she may deem necessary or advisable to carry out and effectuate the intent and purposes of the foregoing resolutions and of the actions referred to therein.

BE IT RESOLVED, FURTHER, that any actions taken by the officers or directors of the Association prior to the date of this action or hereafter that are within the authority conferred hereby are hereby ratified, confirmed and approved as the act and deed of the Association.

[SIGNATURE PAGE FOLLOWS]

SECRETARY'S CERTIFICATE

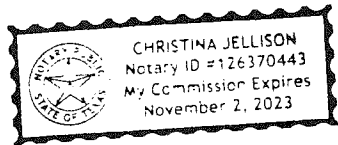
IN WITNESS WHEREOF, the undersigned has executed this Certificate as Secretary on behalf of the Association to be effective upon the recording of this document in the Official Public Records of Hays County, Texas.

By: Donna Courtwright
Title: Secretary

STATE OF TEXAS §

COUNTY OF HAYS ~~TRANS~~ §

This instrument, was acknowledged before me on December 16 2021, by Donna Courtwright, Secretary of the Elliott Ranch Homeowners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.



[Signature]
Notary Public Signature

AFTER RECORDING PLEASE RETURN TO:

Gregory S. Cagle
CAGLE PUGH, LTD. LLP
4301 Westbank Drive, A-150
Austin, Texas 78746

EXHIBIT A**ELLIOTT RANCH HOMEOWNERS ASSOCIATION, INC.
CONTRACT PROCUREMENT POLICY**

The intent of this Contract Procurement Policy (the “**Policy**”) is to assist the Board of Directors (the “**Board**”) of Elliott Ranch Homeowners Association, Inc., Inc. (the “**Association**”), or if applicable, its managing agent (the “**Manager**”) in the procurement of contracts for services in which it is anticipated that the cost of such services shall exceed \$50,000.

The guidance in this policy is intended to provide an outline of required procedures and recommended decision factors for the procurement of certain contracts for services. No policy, however, can provide absolute direction for every circumstance. The Board and/or Manager shall at all times be guided by the good faith exercise of business judgment, common sense, and prudence.

It is also recognized that circumstances may arise that require quick decision making. Nothing in this document is intended to prevent officers and board members from responding in a timely manner to unusual or emergency situations in order to serve the best interests of the Association.

I. PROCUREMENT APPROVAL AND BID REQUIREMENTS

1.1 Applicable Contracts Subject to this Policy. This Policy shall be utilized for the procurement of contracts for services (a “**Services Contract**”) in which it is anticipated that the cost of such services shall exceed \$50,000. For purposes of calculating the cost of the Services Contract, only such costs that are guaranteed under the Services Contract, absent a termination of the Services Contract for cause, shall be included. In other words, if a Services Contract may be terminated at any time for convenience, any costs anticipated under the Services Contract that may be avoided by a termination for convenience as of the effective date of the Services Contract shall not be included in the calculated cost of the Services Contract. By way of illustration, in a one-year Services Contract that may be terminated for convenience with 90-days’ notice, only the payments due during the first ninety (90) days of the contract shall be included in the calculation of the costs of such Services Contract.

In addition, only the guaranteed costs during the guaranteed duration of the Services Contract shall be included in the calculation of its cost. If a Services Contract is for a period of one-year, but includes an automatic annual renewal provision that may be avoided by an affirmative act of the Association, only the guaranteed costs due during the first year shall be included in the calculation of costs.

Notwithstanding, the Board and/or the Manager may, but is not required to, utilize this Policy for the procurement of contracts for goods or for services in which the cost of such services is less than \$50,000.

1.2 Exceptions to the Utilization of this Policy. The Board and/or the Manager shall not be required to adhere to the Policy under the following circumstances:

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1.2.1 The occurrence of a reasonably unforeseen emergency that requires the Association to engage a service provider immediately in order to avoid risk of or further harm to persons or property and there is not sufficient time to allow for the collection and review of bids.

1.2.2 The service at issue does not permit soliciting competitive bids; including services needed to address major facility failures, damages due to disasters, or services necessary to address immediate safety and security issues.

1.2.3 Only one supplier can meet the necessary delivery date with the requirements of established standards, design, quality, or compatibility with existing equipment.

1.2.4 Changing of vendors would disrupt or void existing warranties.

II. REQUESTS FOR QUOTATION AND BID REQUIREMENTS

2.1 Bidding Procedures. When bidding is required, common sense dictates the level of care, detail, and consideration that should be exerted in soliciting bids for services. The intent of this section is to provide general guidance to the Board and/or the Manager on facilitating a bidding process. The Board shall be responsible for insuring the appropriate level of preparation, detail, and due diligence have been met.

2.2. Requests for Quotation (“RFQ”). Prior to solicitation of competitive bids, the Board and/or the Manager will prepare a RFQ consisting of:

2.2.1 Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids and the address where bids are to be delivered.

2.2.2 A scope of work, delivery and performance schedule, and any special instructions necessary.

2.2.3 If applicable, the contract terms and conditions, including warranty and bonding or other requirements.

2.2.4 A statement regarding how the award will be made, such as the award shall be made to the lowest responsive and responsible bidder or the award shall be made to the responsive and responsible bidder whose bid represents the best value to the Association by optimizing quality, cost, and efficiency.

2.2.5 Additional items to be considered for inclusion in the RFQ may include:

- a. Precise statement of work in the case of services.
- b. Precise statement of product(s) in the case of property purchases. This should include item identification (part numbers or minimum performance standards for example)

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- c. Time frames (beginning and completion dates, schedules, milestones, or length of contract, as appropriate)
- d. Request statement of warranty (if appropriate)
- e. Contact information for vendors to ask questions.
- f. Quotation deadline date(s)
- g. Projected decision date
- h. Specification of bid minimum criteria
- i. Liability insurance requirement (if appropriate)
- j. Copies of appropriate licenses

2.3 **Solicitation of Competitive Bids.** In general, at least three competitive bids should be obtained from qualified vendors, as applicable, where bidding is required by this Policy. In order for a bid to qualify as a “competitive bid”, there must be competition among more than one supplier. A single supplier that submits two or three written bids for comparable products, in an attempt to meet the number of bids required by this Policy, will not individually qualify as having met the “competitively bid” criteria. The Association must receive quotes from more than one supplier in order for the good or service being quoted to meet the criteria of “competitively bid”.

In the case of extenuating circumstances, the approval of a Services Contract subject to this Policy may be authorized by the Board based on fewer than three bids if there are circumstances existing that constitute an exception to the utilization of this Policy or there is a lack of qualified vendors reasonably available in the community. If the Board elects to approve a Services Contract subject to this Policy with less than three bids, the reasons for deviating from this Policy shall be documented in the minutes of the meeting at which the Services Contract is approved.

2.4 **Vendor Disqualification.** Because it is not uncommon for membership on the Board or the Manager to change over time, the persons currently serving as the Board and/or the Manager may not be aware of prior experiences that the Association has had with certain vendors. In order to avoid contracting with a vendor with which the Association has had a bad experience, the Association shall maintain a list of vendors which the Association will not do business with due to past poor performance or other valid reasons. Reasons for inclusion on the list include late performance of deliveries or services, poor quality, failure to make good on warranties, or other valid reasons. Input from other property owners associations may be considered. Additions to the exclusion list must be approved by the Board. Any decision to remove a vendor from the exclusion list must also be approved by the Board. A RFQ shall not be submitted to any vendor on the exclusion list unless approved in advance by the Board.

2.5 **Bid Deadline.** Bids shall be submitted to the Board and/or the Manager within the deadline specified. Bids received outside of the specified deadline should not be considered unless an insufficient number of bids are received by the Board and/or Manager within the specified deadline.

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2.6 **Bid Confidentiality.** Bids submitted to the Board and/or Manager shall remain confidential and may not be shared with any prospective vendor.

2.7 **Interested Vendors.** As a general policy, the Association should not do business with members of the Board or persons related to a current member of the Board within the third degree by consanguinity or affinity (“**Related Person**”), or a company in which a current member of the Board or Related Person has a financial interest in at least fifty-one (51) percent of the profits of such company (hereinafter, an “Interested Vendor”) due to potential conflict of interest. However, it is recognized that under certain circumstances it may be advantageous to the Association to enter into contracts with an Interested Vendor because the Interested Vendor is the only vendor that may have particular skills, offers of discount, familiarity with the needs of the Association, etc. In such event, the procurement process must comply with the additional requirements of Section 209.0052 of the Texas Property Code, which include:

2.7.1 the Association obtains at least two other bids for the contract from persons not associated with the Interested Vendor, if reasonably available in the community;

2.7.2 the interested Board member is not given access to the other bids; does not participate in any Board discussion regarding the contract; and does not vote on the award of the contract;

2.7.3 the material facts regarding the relationship or interest of the Interested Vendor with respect to the proposed contract are disclosed to or known by the Board and the Board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of the majority of the Board members who do not have an interest in the Interested Vendor; and

2.7.4 the Board certifies that the requirements of Section 209.0052(a)-(b) have been satisfied by a resolution approved by an affirmative vote of the majority of the Board members who do not have an interest in the Interested Vendor.

III. VENDOR SELECTION

3.1 **Vendor Selection Considerations.** The process diligence and criteria for selecting any vendor varies greatly depending on the value of the expenditure. Common sense suggests that routine purchases of items or services generally available from a variety of sources does not require much consideration or effort. Conversely, higher value purchases and procurement of services and products where expertise and technical considerations are important require proportionally more diligence and effort. The following criteria should be considered:

3.1.1 Cost

3.1.2 Quality

3.1.3 Vendor qualification (appropriate resources, experience, and scale)

3.1.4 Previous history (positive or negative) with the Association or other local property owners associations.

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- 3.1.5 Continuity of services (particularly when dealing with infrastructure maintenance)
- 3.1.6 References
- 3.1.7 Expertise and/or experience
- 3.1.8 Conflicts of interest
- 3.1.9 Proof of liability insurance (where applicable)
- 3.1.10 Proof of appropriate license(s) (where applicable)
- 3.1.11 Preference for local vendors

3.2 Selection of Winning Bid. The process of choosing a winning bid will vary depending on the nature of the work to be performed and the value of the expenditure. The Board shall have the discretion of accepting a bid higher than the low bid if justified based on contractor qualifications or other relevant considerations such as expertise or experience.

If an insufficient number of competitive bids that meet all bidding specifications are received by the submission deadline, the Board shall have the discretion of accepting a bid from amongst those received (even if the selected bid does not meet all of the bidding specifications) or soliciting additional bids based on the same or modified criteria.

The final selection of a vendor needs to reflect a common sense consideration of all these criteria. While cost is frequently a very important factor in vendor decisions, many circumstances may exist when there are good reasons to assign greater importance to other criteria. As a general guideline, the more technically difficult or risky the job, the more emphasis should be placed on previous experience, quality, and continuity of services.

3.3 Contract Renewals. If a Services Contract has an automatic renewal provision, each separate contractual period shall be subject to this Policy. In other words, if a Services Contract is for a guaranteed period of one year (without the ability to terminate for convenience) and has an automatic annual renewal period that may be avoided by an affirmative act of the Association, each annual period of time shall be subject to this Policy and may require competitive bidding if the guaranteed cost for each annual period of time exceeds \$50,000. By way of illustration, if a Services Contract is for a period of one-year and has a guaranteed cost of \$49,000, but it includes an automatic annual renewal provision that may be avoided by an affirmative act of the Association, and the guaranteed cost of the second year period is \$51,000, the Association shall be obligated to seek competitive bids from the current vendor and additional vendors in compliance with this Policy before permitting the renewal of the Services Contract for an additional year.

IV. CONTRACT CONSIDERATION

4.1 Guidelines for Vendor Contract. The Association intends to follow prudent purchasing procedures in authorizing all expenditures. This is particularly important when

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contracts for goods or services are signed on behalf of the Association. The existence of a contract generally signals that the proposed vendor will receive either a higher value purchase order or longer term agreement. Proposed contracts need to reflect a level of due diligence and care in proportion to the value and term of the transaction. The following is a list of considerations that should be reviewed and spelled out in contracts:

4.1.1 Appropriate government regulations must be followed. This may entail building permits or other approvals pertinent to the proposed transaction.

4.1.2 Proof of liability insurance protecting the Association and owners must be received by the Association prior to contract execution.

4.1.3 Vendors must provide proof of appropriate licensing and bonding.

4.1.4 A statement of work appropriate to the value, time frame, and technical difficulty should be included.

4.1.5 In the case of construction and repair projects, the contract should specify an appropriate level of on site management by the vendor and specify procedures for the Association to communicate issues to the vendor during performance of the contract. If appropriate, the contract should acknowledge the use of outside inspection by the Association.

4.1.6 Subcontracting of any portion of the proposed work/product should specify the subcontractor, the specific work/product to be so subcontracted, and a definitive statement of warranty responsibility.

4.1.7 Contracts should specify appropriate terms including:

- a. Timeframes (start and completion dates)
- b. Renewal conditions
- c. Termination clauses or sunset language
- d. Warranty terms

4.2 Additional Contractual Considerations. In addition to the considerations above, the Board should be aware of common mistakes or problems that arise in the negotiating of contractual terms and/or preparing written vendor contracts:

4.2.1 Accepting vendor contract terms

4.2.2 Failing to obtain legal review of higher value contracts

4.2.3 Insuring contract language makes it clear the vendor is not an employee of the Association

4.2.4 Vague termination or sunset terms

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- 4.2.5 Failure to follow the Association's procurement policy
- 4.2.6 Vague warranty terms

**THE STATE OF TEXAS
COUNTY OF HAYS**

I hereby certify that this instrument was FILED on the date and the time stamped hereon by me and was duly RECORDED in the Records of Hays County, Texas.

22004467 RESOLUTION
01/31/2022 09:56:53 AM Total Fees: \$58.00

Elaine H. Cárdenas, MBA, PhD, County Clerk
Hays County, Texas

