

ORDINANCE NO. 07-2009

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING THE TOWN CODE AT CHAPTER 2, ARTICLE V, DIVISION 2, ENTITLED "PURCHASING" TO AMEND SECTION 2-243 ENTITLED "REQUIREMENT OF GOOD FAITH"; SECTION 2-245 ENTITLED "DEFINITIONS"; SECTION 2-247 ENTITLED "PROCUREMENT METHODS"; SECTION 2-248 ENTITLED "COMPETITIVE SEALED BID PROCESS"; SECTION 2-249 ENTITLED "COMPETITIVE SEALED PROPOSAL PROCESS"; SECTION 2-250 ENTITLED "ALTERNATIVE SOURCE ELECTION"; AND SECTION 2-252 ENTITLED "PROTESTED SOLICITATIONS AND AWARDS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida ("Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town has codified a procedure governing the procurement of goods and services, in which the Town has established procedures and the methods of procurements to be used when the Town desires to purchase goods and services; and

WHEREAS, it is generally in the best interest of the Town to use competitive procurement methods in order to obtain the best price and maximize the value of public funds in procurements; and

WHEREAS, establishing procurement methods and procedures for Town purchases, will provide for the fair and equitable treatment of persons and entities involved in purchasing by the Town, and establish safeguards for maintaining a procurement system of quality and integrity; and

WHEREAS, Town staff has recommended to the Town Commission that it amend Chapter 2, Article V, Division 2, Sections 2-243, 2-245, 2-247, 2-248, 2-249, 2-250, and 2-252; and

WHEREAS, the Town Commission has reviewed the recommendations of Town staff, and has determined that amending Chapter 2, Article V, Division 2, Sections 2-243, 2-245, 2-247, 2-248, 2-249, 2-250, and 2-252 of the Town's Code of Ordinances is necessary to further the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, THAT:

Section 1. The whereas clauses are incorporated herein as true and correct, and are the findings of fact and conclusions of law of the Town Commission.

Section 2. Chapter 2, Article V, Division 2, Sections 2-243, 2-245, 2-247, 2-248, 2-249, 2-250, and 2-252 of the Town's Code of Ordinances are hereby amended to read as follows:

DIVISION 2. PURCHASING

Sec. 2-241. General purpose.

The purpose of this division is to meet the following objectives:

- (1) Establish policies governing all purchases and contracts;
- (2) Encourage and promote fair and equal opportunity for all persons doing business with the Town;
- (3) Obtain goods and services of satisfactory quality and quantity at reasonable cost for the Town;
- (4) Permit the continued development of procurement policies and procedures through the promulgation of administrative regulations and internal procedures of purchasing and contracts;
- (5) Foster effective broad-based competition within the free enterprise system; and

(6) Provide safeguards for the maintenance of a procurement system of quality and integrity.

(Ord. No. 9-1996, § 11, 9-18-1996; Ord. No. 1-2000, § 1, 2-2-2000; Code 1978, § 2-96)

Sec. 2-242. Supplementary general principles of law applicable.

(a) *Compliance with federal and state law.* The Town shall comply with all applicable federal and state laws.

(b) *Principles of law and equity.* The principles of law and equity, including the Uniform Commercial Code of this state (F.S. chs. 670--680), laws relative to ethics, and laws relative to contract, agency, fraud, misrepresentation, duress, coercion, mistake or bankruptcy shall supplement the provisions of this division.

(c) *Access to procurement information.* Procurement information shall be a public record to the extent provided in F.S. ch. 119, and shall be available to the public as provided by law.

(d) *Preference to proposals for goods and services.* The Town shall have the option to give preference to proposals for goods and services received from vendors whose businesses are based within the Town where price, quality and other relative factors are comparable.

(Ord. No. 9-1996, § 11, 9-18-1996; Ord. No. 1-2000, § 1, 2-2-2000; Code 1978, § 2-97)

Sec. 2-243. Requirement of good faith.

The provisions of this division require all parties involved in the development, performance or administration of purchasing contracts of the Town Commission to act in good faith.

The Town Commission recognizes that fair and open competition is a basic tenant of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are processed. The purchase of all commodities and services will be in accordance with Town policy, codes, regulations and all applicable State Statutes

(Ord. No. 9-1996, § 11, 9-18-1996; Ord. No. 1-2000, § 1, 2-2-2000; Code 1978, § 2-98)

Sec. 2-244. Application and exclusions.

(a) The provisions of this division shall apply to every purchase/procurement by the Town, irrespective of their fund source, including state and federal assistance monies, except as otherwise specified by law. Items in this category shall be paid for through a request for disbursement. The provisions of this division shall not apply to:

(1) Agreements between the Town Commission and nonprofit organizations or governmental entities including the procurement, transfer, sale or exchange of goods and/or services.

- (2) Procurement of dues and memberships in trade or professional organizations; subscriptions to periodicals; title insurance for real property; court reporter services; water, sewer and electrical utility services; copyrighted materials; patented materials; and fees and costs of job-related seminars and training.
- (3) Real property.
- (4) Legal services, including attorney, paralegal, expert witness, appraisal, or mediator services.
- (5) Auditing services.
- (6) Lectures by individuals.
- (7) Goods and/or services given, or accepted by the Town via grant, gift or bequest.
- (8) Goods purchased with petty cash in accordance with established Town procedures.
- (9) Goods and/or services purchased under contract with the federal, state or any other municipal government or government agency or political subdivision providing the vendor extends the same terms and conditions of the contract to the Town.
- (10) Items purchased for resale to the general public.
- (11) Permits (payable to governmental entities).
- (12) Approved travel expenses.
- (13) Legal settlements. (However, any legal settlements over the amount of \$5,000.00 shall be approved by the Town Commission in a public meeting.)
- (14) Insurance.
- (15) Health services.
- (16) Conferences and travel.
- (17) Utilities bills.
- (18) Normal recurring disbursements not for the purpose of acquiring goods and services.

(b) The exclusions listed above do not preclude the town from procuring such goods and/or services using the procedures listed herein this division.

(c) The minimum requirements of this division do not preclude additional procedures from being taken as deemed appropriate by the Town Manager or Town staff.

(Ord. No. 9-1996, § II, 9-18-1996; Ord. No. 1-2000, § I, 2-2-2000; Code 1978, § 2-99)

State law references: Proposed purchase of real property by municipality, F.S. § 166.045.

Sec. 2-245. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~Agreement means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing, usage of trade, or course of performance. Whether an agreement has legal consequences is determined by the provisions of the Uniform Commercial Code of the state (F.S. chs. 670-680), if applicable, otherwise, by the law of contracts.~~

AGREEMENT: The written agreement between the Town of Lake Park and vendor covering the work to be performed; other contract documents are incorporated into or referenced in the agreement and made a part thereof as provided therein.

~~AMENDMENT: means~~ A modification, deletion or addition to an executed contract by means of a formally executed document signed by both parties.

~~BID: means~~ A formal written price offer by a vendor to the Town to furnish specific goods and/or services in response to an invitation to bid. ~~or a multistop bidding procedure.~~

~~Bid award means award of a bid for which funds have lawfully been appropriated by the town commission.~~

BID AWARD: A contract and/or purchase order to the selected vendor to provide specific commodities and/or services to the Town for which funds have been appropriated by the Town of Lake Park Commission.

BID CRITERIA: The basis upon which the Town will rely to determine acceptability of a bid or proposal, as stated in the bid or the proposal, including, but not limited to, inspection, testing, quality, workmanship, delivery, price, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total cost or life cycle costs.

~~BLANKET PURCHASE ORDER: means~~ A purchase order under which vendor agrees to provide goods and/or services to a purchaser on a demand basis.; ~~the purchase order generally establishes a maximum dollar limit, and the period covered, with no specified quantities; shipments are to be made as required by the purchaser. Some blanket purchase orders may establish the price, terms and/or conditions of purchase.~~

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

~~Capital improvement project or project means any public improvement which the town undertakes, including the construction or reconstruction in whole or in part, of any building, road, highway, street improvements, physical plant, structure, or facility necessary in carrying out the functions of the town government. The term does not include any routine maintenance, operation or repair of existing structures, buildings or real property.~~

CERTIFICATE OF CONTRACT COMPLETION: A form which indicates that a project has been satisfactorily completed and the contractor has paid all labor, materials and other charges against the project in accordance with the terms of the contract.

CERTIFICATE OF INSURANCE: A document which shows proof of insurance, coverage, types and amounts.

~~Change order means a written modification to a contract or purchase order, which normally revises the quantities or scope of services, and may include an extension of time to complete the contract.~~

CHANGE ORDER: A written instrument issued on or after the effective date of the formal written contract or purchase order which, when duly executed by the Town and contractor, amends the contract documents to provide for a change in the work or in the provisions of the contract documents, or changes in contract price or contract time, or any combination thereof. A change order to a purchase order must be processed by the Town Manager for all changes that affect the original dollar amount by an increase of ten (10%) percent or more. Depending on the size of the contract, the change order may require Commission approval.

COMMODITIES: Any tangible personal property other than services or real property.

~~Construction means the process, usually requiring the professional services an architect and/or engineer, of building, altering, repairing, improving, or demolishing any structure or building, or other improvements of any kind to any 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 service; or any other advisory, study, or programming activity. The finance director may determine in writing that the level of skills and/or creativity of those services are defined and prescribed under F.S. § 287.055.~~

CONSULTANTS COMPETITIVE NEGOTIATION ACT (CCNA): Acquisitions of architectural, engineering, landscape architectural or surveying and mapping services. (Florida Statute, section 287:055).

CONSULTING SERVICES: All other services that do not fall under the definition of professional services for the Consultant Competitive Negotiation Act (CCNA).

CONTINUING SERVICES CONTRACT: A continuing contract to retain the services of a consultant(s). The authorization for performance of services by the consultant shall be in written form issued and executed by the Town and signed by the consultant.

~~Contract means (i) a deliberate verbal or written agreement between two or more competent parties to perform or not perform a specific act or acts, (ii) any type of agreement regardless of what such agreement is called for the procurement or disposal of goods, services or construction; usually for exchanging goods or services for money or other consideration.~~

CONTRACT: A deliberate verbal or written agreement between two or more competent parties to perform or not perform a specific act or acts, or any type of agreement (regardless of what it is called) for the procurement or disposal of goods, services or construction in exchange for money or other consideration. An authorized purchase order is a contract even though it is only signed by the Town Manager, Finance Director or designee.

~~Contractor means any person having a contract with the town commission.~~

DEBARMENT: means The exclusion, for cause, of a vendor or contractor from bidding and/or receiving a contract to do business with the Town.

DESIGN-BUILD: ~~services means~~ The requirement for which a single contract with a design-build firm is entered into for the design and construction of a capital improvement construction project.

DESIGNEE: means A duly authorized representative of a person, organization, or agency holding a superior position.

DISCRIMINATION: Any vendor who has been placed on the discrimination vendor list as defined by Florida Statute Section 287.134, shall not be able to transact business with the Town to the extent as specified in Florida Statute 287.134 (2) (b).

~~Emergency purchases means a procurement 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 town and/or the town's citizens.~~

EMERGENCY PURCHASE: Procurement made in response to certain emergencies or when the delay caused by complying with all governing rules, regulations, and/or procedures would be detrimental to the health, safety and welfare of the Town and/or its citizens or would create a hardship on the reasonable conduct of business in a timely fashion. Lack of planning, or funding surpluses, do not justify emergency purchases.

FIELD PURCHASE ORDER: means A purchase of \$500.00 or less, not requiring a purchase requisition or regular purchase order.

*EXCEPTION: \$1,500.00 or less for Public Works FPO: An exception is made for the purchase limits for Public Works Department (only) due to the nature of purchases such as construction materials, mechanical parts, landscaping materials, irrigation system parts etc. on a routine basis. All other requirements for bid solicitation and reporting remain the same.

FORMAL CONTRACT: Represents a legal obligation on the part of each party to the formal contract, which results from both parties' signatures being affixed to the contract documents and some additional obligation imposed by law.

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

HEALTH SERVICES: means The procurement of any medical functions not covered by insurance, including but not limited to pre-employment physicals, random drug screening, medical consultations, and the contractual employment of the medical director for the county fire department.

~~Invitation to bid (ITB) means the solicitation document and all attachments and addendums used for competitive sealed bidding for the procurement of construction, goods and/or services.~~

INVITATION FOR BIDS: All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids for the procurement of construction, commodities, and/or services.

~~Item means a single, separate unit, article, product, material or service.~~

LETTER OF RENEWAL: A document, generated by either party, to renew or extend the contract in accordance with the terms of the original contract. Contract renewals will be requested by the department head and prepared and approved by the Town Manager, Finance Director or designee and/or Town Commission where applicable per contract documents.

~~Mandatory formal procurement threshold dollar bid amount means the threshold dollar amount established as policy by the town commission when at and above which the formal competitive sealed bid or proposal processes shall be used~~

MANDATORY BID AMOUNT: means The threshold dollar amount established as policy by the Town Commission at and above which the formal competitive sealed bid process shall be used, except as otherwise provided herein. The mandatory bid amount threshold shall be is \$25,000.00 as established by the Town Commission.

MINORITY BUSINESS ENTERPRISES: means Any small business concern, which is defined as a minority business enterprise pursuant to Section 288.703, Fla. Stat., as amended from time to time, which is organized to engage in commercial transactions, which is domiciled in the state, and which is at least 51 percent owned by minority persons who are members of an insular group that is of a particular racial, ethnic or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group resulting in an under representation of commercial enterprises under the group's control, and where management and daily operations are controlled by such persons. A minority business enterprise

~~may primarily involve the practice of a profession. Ownership by a minority person does not include ownership, which is the result of a transfer from a non-minority person within a related immediate family group if the combined total net assessed value of all members of such family group exceeds \$1,000,000.00. For purposes of this subsection, the term "related immediate family group" means one or more children under 16 years of age, and a parent of such children or the spouse of such parent residing in the same house or living unit.~~

~~Minority person means a lawful permanent resident of the state who is:-~~

~~Minority person means a lawful permanent resident of the state who is:-~~

~~(1) An African American, who is a person having origins in any of the racial groups of the African Diaspora.~~

~~(2) A Hispanic American, who is a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America or the Caribbean regardless of race.~~

~~(3) An Asian American, who is a person having origins in any of the original peoples of the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778.~~

~~(4) A Native American, who is a person who has origins in any of the Indian Tribes of North America prior to 1835, upon presentation of proper documentation thereof.~~

~~(5) An American Woman.~~

MINORITY PERSON shall have the definition be defined as ascribed by Section 288.703, Fla. Stat., as amended from time to time, means a lawful permanent resident of the state who is:-

NON-RESPONSIVE BIDDER, PROPOSER, OR RESPONDENT: Any vendor responding to an Invitation to Bid, Request for Proposals, Request for Statement of Qualifications who does not submit the required signed documents or submits incomplete requested documents and/or information.

NOTICE TO PROCEED: A written notification from the Town Manager or Finance Director or designee to the contractor to establish commencement of the contractor's responsibilities under the provisions of the contract.

PERSON: means Any business, individual, union, committee, club, or organization, or group of individuals.

~~Procurement means buying, purchasing, renting, leasing or otherwise acquiring any goods and/or services for public purposes in accordance with the law, rules, regulations and procedures intended to provide for the economic expenditure of public funds. The term "procurement" includes but is not limited to all functions which pertain to the obtaining of any supplies, materials, equipment and/or services including construction projects and capital improvement projects, as defined herein, required by any department or agency of town government regardless of the source of funds or for which payment is made from town funds. For the purpose of this division, the term "procurement" excludes those items set forth in section 2-244(a).~~

PROCUREMENT: Buying, purchasing, renting, leasing or otherwise acquiring any commodities and/or services for public purposes in accordance with the law, rules, regulations and procedure intended to provide for 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 and capital improvement projects, as defined herein, required by the Town.

~~Professional services means architectural, engineering, landscape architectural, and registered land surveying services as defined and prescribed under F.S. § 287.055.~~

PROFESSIONAL SERVICES (PS): A solicitation for responses for CCNA services which include architectural, engineering, landscape architectural, and registered land surveying and mapping services as defined and prescribed under Florida Statutes 287.055.

PROJECT MANAGER: A person designated by the Town Manager to ensure compliance with Town codes, resolutions, procedures, and specification for contracts which he/she originates. The Project Manager, along with the Department Head is held accountable for contract compliance.

~~Proposal means an executed formal document submitted by an offerer to the town stating the goods and/or service offered to satisfy the need as requested in the request for proposal or request for information.~~

PROPOSAL: An executed formal document submitted by a vendor to the Town stating the goods and/or service offered to satisfy the need as described in a Request for Proposals (RFP), Request for Statement of Qualifications (RFQ) or a Request for Information (RFI).

PUBLIC ENTITY CRIME: Any vendor who has been convicted of a public entity crime as defined by Florida Statute Section 287.133, shall not be able to transact business with the Town to the extent as specified in Florida Statute 287.133 (2) (a).

PUBLIC NOTICE: The required notification or advertisement of an invitation to bid, request for proposal, or other competitive solicitation provided for in this division, to be given to prospective vendors for a reasonable/required period of time as determined by the Town Manager, which shall, at a minimum, include: (i) direct notice to prospective vendors on an applicable bidders list maintained by the finance department; (ii) posting public notice on the Town website; and (iii) notice in a newspaper of general circulation when required by applicable law. The public notice shall describe the goods or services sought, and state the date, time and place of the bid/proposal/solicitation opening.

PUBLIC RECORD: Upon award recommendation or ten (10) days after opening, Invitation to Bid, Request for Proposals, Request for Statement of Qualifications and Request for Information, becomes public records and shall be subject to public disclosure consistent with Chapter 119, Florida State Statutes.

~~*Purchase order* means the town's document used to authorize a purchase transaction with a vendor. A purchase order should contain provisions for goods and/or services ordered, applicable terms as to payment, discounts, date of performance, transportation and other factors or conditions relating to the transaction. Acceptance of a purchase order by a vendor shall constitute a contract, except instances in which a purchase order is used only as an internal encumbrance document.~~

PURCHASE ORDER: The Town's document used to authorize a purchase transaction with a vendor, which contains provisions and/or descriptions for goods and/or services ordered. Acceptance of a valid purchase order by a vendor shall constitute a legally binding contract.

~~*Purchase* means the same as procurement, as defined herein.~~

QUOTATION: means Any oral or written informal offer by a vendor to the Town to furnish specific goods and/or services at a stated price.

REQUEST FOR INFORMATION (RFI): A solicitation for response from interested and prospective vendors/contractors to provide information to determine specifications, qualifications and/or capabilities to satisfy a need rather than a firm specification and in which the respondent may be given latitude in order to develop a product and/or service which will fulfill the need. Upon receipt of responses to the RFI, the Town may develop specifications for an Invitation for Bid or criteria for a Request for Proposal, either of which may be issued to qualified proposers who submitted responses to the RFI.

~~**REQUEST FOR LETTERS OF INTEREST:** A solicitation of responses from interested and prospective vendors/contractors to provide information and/or specifications in order to determine qualifications and/or capabilities to satisfy a need rather than a firm specification, and in which the vendor respondent may be given latitude in order to develop a product and/or service which will fulfill the need. Upon receipt of responses to the request for letters of interest, the town may develop specifications for an invitation to bid or criteria for a request for proposal, either of which may be issued to qualified proposers who submitted responses to the request for letters of interest.~~

~~**REQUEST FOR PROPOSAL (RFP):** means A solicitation of responses for a good commodities and/or services for which the scope of work, specifications or contractual terms and 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 QUALIFICATION (RFO): Solicitation for Statement of Qualifications pursuant to Florida Statutes, section 287:055, known as the Consultants Competitive Negotiation Act (CCNA).

~~Requisition means the document specifying the items a cost center is requesting to purchase. The requisition document should be completed by the appropriate department head, and include the proper account numbers as well as the proper number of oral or written price quotes required by this division.~~

REQUISITION: An internal document generated by the requesting department and forwarded to the Town Manager or Finance Director requesting purchase of commodities and/or services.

~~Responsible bidder means a bidder who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability, which will assure good faith performance.~~

~~Responsible proposer means a proposer who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability, which will assure good faith performance.~~

RESPONSIBLE BIDDER, PROPOSER, OR RESPONDENT: A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, ability, reliability, capacity, facilities, equipment, financial resources and credit which will assure good faith performance.

RESPONSIVE BID: A bid submitted by a responsive and responsible bidder, which conforms in all material respects to the invitation for bids.

RESPONSIVE BIDDER: A bidder who has submitted a bid, which conforms in all material respects to the invitation for bids.

RESPONSIVE PROPOSAL: A proposal submitted by a responsive and responsible proposer, which conforms in all material respects to the request for proposal.

RESPONSIVE PROPOSER: A proposer who has submitted a proposal, which at a minimum conforms in all material respects to the request for proposal.

SALES TAX RECOVERY: An option, resulting from the Town's tax exempt status, reserved by the Town to purchase all, any, or none of the materials and equipment included in each contract agreement directly from the manufacturer or supplier.

SOLE SOURCE: The only existing source of an item which meets the needs of the user department as determined and documented by a reasonable analysis of the marketplace. If in the process of a public bid, only one response is received, the Town Manager or Finance Director may proceed as a Sole Source Purchase.

SPECIFICATION: A concise statement of terms, conditions and a set of requirements to be satisfied by a product, material, service, or process used in an Invitation for Bids, Request for Proposals, and Request for Statement of Qualifications. It may include a description of any requirement for inspecting, testing, or preparing a commodity, service, or construction item for delivery.

SURETY BONDS: A document from the contractor, which is issued to guarantee that an obligation will be fulfilled. The nature of the obligation determines the type of bond that will be issued. The types of surety bonds include: license and permit bonds, public official bonds, bid, performance, labor, material and payment bonds.

SUSPENSION: The temporary debarment of a vendor for a period not to exceed three (3) years.

TOWN: When herein referenced refers to the Town of Lake Park.

WARRANTY: The representation, either expressed or implied, that a certain fact regarding the subject matter of a contract is presently true or will be true.

(Ord. No. 9-1996, § II, 9-18-1996; Ord. No. 1-2000, § I, 2-2-2000; Code 1978, § 2-100)

Cross references: Definitions generally, § 1-2.

Sec. 2-246. Organization.

The Finance Department shall be the agency through which the town will conduct all of its procurement and contracting for all supplies, material, equipment, contractual services, professional and consultant services, construction and/or combination of goods and services. A properly completed purchase requisition should be completed and approved by the appropriate department head prior to submission to the Finance Department. When a field purchase order is used, a requisition need not be completed but the field purchase order should be approved by the Department Head, and a copy of the field purchase order promptly sent to the Finance Department.

(Ord. No. 9-1996, § II, 9-18-1996; Ord. No. 1-2000, § I, 2-2-2000; Code 1978, § 2-101)

Sec. 2-247. Procurement methods.

(a) *Twenty-five thousand dollars or more estimated cost:* Any purchase with an estimated cost of \$25,000.00 or more except in an emergency situation (as determined by the Town Manager), or when involving single-source commodities (as determined by the Finance Director or Town Manager) must have an invitation to bid or request for proposal formally advertised in a newspaper of general circulation in the county, ~~28~~ 21 days prior to the date set for submittal of bids or proposals. All purchases with an estimated cost of \$25,000 or more shall require Town Commission approval.

(b) *Ten Five-thousand dollars through \$24,999.99.* All purchases having a value between ~~Five-Ten~~ thousand dollars (\$10,000.00) through \$24,999.99 must have at least three written quotes from vendors. The results should be summarized by the cost center procuring the commodity or service, and the purchase reviewed by the Finance Director, and approved by the Town Manager. ~~Three~~ Four quotes are not required in emergency situations or when involving single-source commodities, as determined by the Finance Director or Town Manager. All purchases with an estimated cost of \$10,000.00 or more shall require Town Commission approval.

(c) *Five hundred dollars through ~~\$4,999.99~~ \$9,999.99.* All purchases having a value over \$500.00 through ~~\$4,999.99~~ \$9,999.99 must have at least three phone quotes documented by the procuring department. The documentation should include the vendor name, phone number, contact person, and quoted price. The Town Manager, Finance Director or the designee's assistant must approve all purchases between the amounts of \$500.00 and ~~\$4,999.99~~ \$9,999.99. Appropriate quotes should be submitted to the Finance Department with the purchase requisition.

(d) *One cent through \$499.99.* All purchases having a value between \$0.01 and \$499.99 may be made using a field purchase order (FPO). It is the responsibility of the procuring department to ensure that items are obtained at a competitive price, and that the department has not exceeded the line-item budgetary appropriation for the items purchased. The procuring department shall not use field purchase orders to make more than one purchase of the same item within five business days if the total cost is more than \$499.99.

EXCEPTION: One cent through \$1,500.00. Public Works FPO: An exception is made for the purchase limits for Public Works Department (only) due to the nature of purchases such as construction materials, mechanical parts, landscaping materials, irrigation system parts etc. on a routine basis. All other requirements for bid solicitation and reporting remain the same.

(e) *Review of purchases.* The Finance Department may review such purchases from time to time to ~~validate the integrity of the purchase. One copy of each field purchase order shall be immediately forwarded to the finance department by the procuring department after completion of such field purchase order.~~ ensure the validity of the purchase, including but not limited to, a confirmation of the need for the items purchased, verification of the department's report and its supporting documentation, the adherence to these purchasing procedures, and the overall integrity of the process used. One copy of each field purchase order shall be immediately forwarded to the Finance Department by the user ~~procuring department after completion~~ consummation of the purchase. ~~pursuant to the completion of such field purchase order.~~

(f) Aggregate Annual Amounts: All references to bids and purchases and amounts established for bid parameters shall be deemed to be aggregate annual amounts, to the extent feasibly by each department. The total annual expected value of the purchase is to be used to determine the type of bid process to be applied. There shall be no artificial division of orders, piecemeal orders or other plans of order diversion or pyramiding to avoid said requirement.

(g) Unauthorized Purchases Prohibited: Unless specifically identified and approved it shall be prohibited for any Town employee to order the purchase of any goods or services or make a contract other than through the Finance Director unless otherwise provided herein. Any purchase or contract made contrary to the provisions hereof are not authorized and shall not be binding upon the Town, even though said goods and/or services are used or consumed in support of the effort of the Town.

(Ord. No. 9-1996, § 11, 9-18-1996; Ord. No. 1-2000, § 1, 2-2-2000; Code 1978, § 2-102)

Sec. 2-248. Competitive sealed bid process.

(a) **THRESHOLD AMOUNT.** The threshold dollar amount established as policy by the Town Commission at and above which the competitive sealed bid process shall be used, except as otherwise provided herein shall be ~~\$10,000.00~~ \$25,000.00.

(b) ~~INVITATION TO FOR BIDS.~~ An invitation to bid shall be issued which shall include the specifications, scope of service, and all contractual terms and conditions applicable to the procurement. bid and shall set forth the evaluation criteria to be used to determine the award.

(c) **PUBLICATION OF NOTICE.** Public notice of the invitation to bid shall be published in a newspaper of general circulation in the county for 21 days a reasonable period prior to bid opening submittal deadline, and posted on the Town of Lake Park web site. Bid Notice shall be sent directly to prospective bidders that are on the vendor file relevant to the specific commodity, and shall be mailed to all parties on any particular vendor list. The public notice shall state the place, date, and time of bid opening.

(1) For Bids estimated to be from twenty five thousand dollars (\$25,000.00) or more and expected to be under two hundred thousand dollars (\$200,000.00), the public notice of the invitation to Bid shall provide a minimum of ~~ten (10)~~ 21 days for submission of bids.

(2) For bids estimated to be over two hundred thousand dollars (\$200,000.00) public notice of the Invitation to Bid shall provide at least thirty (30) days for submission of bids unless determined by the town manager or finance director to not be in the best interest of the Town.

BIDS GENERALLY. ~~Bids must be received no later than the time and date and at the location specified for bid opening in the invitation to bid. No bids shall be accepted after such time and date or at any other location than specified; any bids received later or at any other location than specified shall be returned unopened to the bidder. It shall be the bidders' sole responsibility to ensure that their bid reaches the specified place at the specified time. Bidders shall be allowed to withdraw their bids at any time prior to bid opening.~~

(d) BID SUBMISSION: Bids must be received, in a sealed envelope, no later than the time and date and at the location specified. Any bids received later or at any other location than specified

will not be accepted and shall be returned unopened to the bidder. It shall be the bidders' sole responsibility to ensure that their bid reaches the specified place for receipt of bids by the specified time. The Town shall bear no responsibility for any failure of the U.S. Postal Service, other courier service or Town employee to successfully deliver a bid to the designated delivery location. It is noted that bidders shall be allowed to withdraw their bids at any time prior to bid opening.

(1) All bids and accompanying documentation received from bidders in response to an invitation to bid, become the property of the Town, and will not be returned to the bidders. In the event of a contract award, all documentation produced as part of the contract shall become the exclusive property of the Town.

(e) BID ACCEPTANCE AND EVALUATION: Bids shall be accepted from all qualified vendors except as otherwise provided herein and shall be evaluated based on the requirements set forth in the Invitation for Bid. Unsolicited alternates will not be considered.

The Town may, at any time and in its sole discretion, reject all bids and/or re-advertise for bids using the same or different specifications and terms and conditions.

(f) BID OPENING. Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place specified in the invitation to bid. At the time of public opening, the Town Clerk or designee will officiate at all public bid opening of sealed bids, and shall be announced and recorded the name of each bidder, the amount of each bid and such other relevant information as the Town Manager deems appropriate.

(g) PUBLIC RECORD: Upon award recommendation or ten (10) days after opening, bids become public records and shall be subject to public disclosure consistent with Chapter 119, Florida State Statutes.

(h) CANCELLING OR POSTPONING INVITATION TO BID. The Town Manager or Finance Director may, prior to bid opening, elect to cancel an invitation to bid or postpone the date and/or time of bid submission or opening. In such situations, an addendum will be issued.

~~(e) Required information; errors; responsiveness.~~

~~(1) The following shall govern the correction of information submitted in a bid when that information is a determinant to the responsiveness of the bid a material factor in determining the responsiveness of the bid:~~

~~a. Errors in the extension of unit prices stated in a bid or in multiplication, division, addition, or subtraction in a bid may be corrected by the finance director or designee prior to award. In such cases, the unit prices bid shall not be changed. When bidders quote in words and in figures on items on the bid form, and the words and figures do not agree, the words shall govern and the figures shall be disregarded.~~

~~b. No bidder shall be permitted to correct a bid error after the bid opening that would cause such bidder to have the low bid, except that any bidder may correct~~

~~errors in extension of unit prices stated in the bids, or in multiplication, division, addition, or subtraction. In such cases, unit prices bid shall not be changed, and such error must be readily apparent on the face of the bid form.~~

~~e. Nothing herein is intended to prohibit the acceptance of a voluntary reduction in price from a low bidder after bid opening, and prior to commencement of work, provided such reduction is not conditioned on, or does not result in, the modification or deletion of any specifications or conditions contained in the invitation to bid.~~

~~(2) A bidder who alleges a judgmental error of fact shall not be permitted to withdraw the bid after bid opening. If such bidder unilaterally withdraws the bid without permission after bid opening, the Town Manager director may suspend the vendor from receiving new orders from the town for up to two three years, dating from the date of unilateral withdrawal, and the Town shall retain any bid security submitted with the bid.~~

~~(3) A bidder who alleges a nonjudgmental error of fact may be permitted to withdraw the bid only when it is determined by the town manager or finance director that there is reasonable proof that such a mistake was made and, if the bid is the low bid, that the intended bid cannot be determined with reasonable certainty. If a bidder unilaterally withdraws the bid without permission after bid opening, the town manager or finance director may suspend the vendor from receiving new orders from the town for up to three two years, dating from the date of the unilateral withdrawal, and the town shall retain any bid security submitted with the bid.~~

~~(4) Information in a bid which concerns the responsibility of the bidder shall not necessarily be considered conclusive at the time of the bid opening, except when the invitation to bid unequivocally states that the bid shall not be considered responsive unless the particular information is provided in the bid. When such information has not been so declared as determinant of responsiveness of the bid:~~

~~a. The finance director may determine that the information submitted concerning the responsibility of the bidder is so administratively inadequate as to warrant a recommendation of rejection of the bid based on a lack of demonstrated responsibility.~~

~~b. The finance director may, after bid opening, request additional information from the bidder concerning the bidder's responsibility to perform; and the bidder may voluntarily, after bid opening, provide additional or corrective information concerning the bidder's responsibility as a bidder. The finance director shall consider this and all other information gained prior to the time of award or rejection in making a decision.~~

~~(5) A bid shall be considered responsive only if it conforms to the requirements of the invitation to bid concerning pricing, surety, insurance, specifications of the goods or services requested, and any other matter unequivocally stated in the invitation to bids as a determinant of responsiveness. A lack of conformity on these matters which is non-substantive in nature may be considered a technicality or irregularity which may be waived by the finance director.~~

(i) Withdrawal of Bids: A bidder can withdraw their bid up to the time listed for receipt of bids. If a bidder unilaterally withdraws their bid without permission after bid opening, the Finance Director may suspend the vendor from participating in future bids for up to three (3) years.

(j) **Corrections to bids:** The following shall govern the corrections of information submitted in a bid when the information is a material factor in determining the responsiveness of the bid.

(1) Errors in extension of unit prices or in multiplication, division, addition or subtraction in a bid may be corrected by the Finance Director or designee prior to award. In such cases, the unit prices bid shall not be changed. When bidders quote in words and in figures on items on the bid sheet and the words and figures do not agree, the words shall govern and the figures shall be disregarded.

(2) Nothing herein is intended to prohibit the acceptance of a voluntary reduction in price from the low bidder after recommendation to award bid to the low bidder, provided such reduction is not conditioned on, or does not result in, the modification or deletion of any specifications or conditions contained in the Invitation to Bid.

(k) **Responsible Bidder:** Factors to be considered in determining whether the standard of responsibility for bidders/proposers has been met include whether, in the Town's determination, a prospective vendor/contractor has:

(1) Appropriate financial, material, equipment, facility, and personnel resources, experience, knowledge and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements.

(2) A satisfactory record of performance on similar projects

(3) A satisfactory record of integrity

(4) Qualified legally to contract with the Town

(l) **RESPONSIVE BIDDER:** A bid shall be considered responsive only if it conforms to the requirements of the Invitation for Bids concerning pricing, surety, insurance, specifications of the commodities or services requested, inclusion of required documents and signed forms and any other matter unequivocally stated in the Invitation for Bids.

(m) **TIE BIDS.** If two (2) or more bidders are tied, the tie may be broken and the successful bidder selected by the following criteria presented in order of importance and consideration:

- a. Quality of the items or services bid if such quality is ascertainable.
- b. Delivery time if provided in the bid by the bidders.
- c. Certification of a "Drug-Free Workplace Program" which meets criteria established in F.S. § 287.087.
- d. Location of the vendor with the following award preferences:
 - i. A Town of Lake Park vendor.
 - ii. A Palm Beach County vendor.
 - iii. A Florida vendor.

iv. A minority business enterprise certified pursuant to the provisions of Section 288.703, Fla. Stat., as amended from time to time.

- c. If the above criteria are impossible to determine with any reasonableness or do not resolve the issue, the award will be given to that bidder whose bid was received earliest in time by the Town as indicated by the time clock stamp impressed upon the bid envelope of each bidder.

(n) BID AWARD: Award will ordinarily be made to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids, and shall be effective upon issuance of a purchase order, execution of a contract, or written notice of award by the Finance Director. The town may reject any bid prior to such issuance. In the event only one bid is received, the Town may award to the sole bidder if the bid is deemed to be reasonable and in the best interests of the Town or to request new bids. In the event all bids exceed budgeted funds, the Finance Director, with direction of the Town Manager, in cooperation with affected Department Director, is authorized, when time or economic considerations preclude re-solicitation to negotiate an adjustment of the bid price and/or bid specifications with the low responsive and responsible bidder in order to bring the bid within the amount of budgeted funds.

~~(o) RESERVED RIGHTS: The Town reserves the right to accept or reject any and all bids and/or to make award to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids and whose award will, in the opinion of the Town, be in the best interest of the Town.~~

(o) REJECTION OR AWARD OF BIDS.

(1) The Town reserves the right to accept or reject any and all bids and/or to make award to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation to bid and whose award will, in the opinion of the Town, be in the best interest of and most advantageous to the Town.

(2) Factors to be considered in determining whether the standard of responsibility has been met include whether, in the Town's determination, a prospective vendor/contractor has:

- a. Appropriate financial, material, equipment, facility, and personnel resources, experience, knowledge, and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- b. A satisfactory record of performance on similar projects;
- c. A satisfactory record of integrity;
- d. Qualified legally to contract with the Town; and
- e. Supplied all necessary information in connection with the inquiry concerning responsibility including but not limited to any licenses, permits, insurance, or organization papers required.

The prospective vendor/contractor shall supply information requested by the Town concerning the responsibility of such vendor/contractor. If such

vendor/contractor fails to supply the requested information, the Town shall base the determination of responsibility upon any available information or may find the prospective vendor/contractor nonresponsive if such information is not submitted within the time specified by the Finance Director.

(3) The Town may conduct a prequalification process in which the responsibility of potential vendors/contractors is evaluated and may then limit acceptance of bids or proposals to those vendors/contractors deemed qualified in such process.

~~(i) When award effective. Award shall be made to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation to bid, and shall be effective upon issuance of a purchase order, contract, or written notice of award by the finance director. The town may reject any bid prior to such issuance. In the event only one bid is received, the town may award to the sole bidder, negotiate with the sole bidder, or rebid. All bid awards must be approved by the town commission.~~

(p) *Changes and amendments.* The Finance Director may authorize changes/amendments for construction, and goods and/or services within the overall scope of the project or procurement of up to a cumulative amount of 20 percent or \$5,000.00, whichever is lower. If the amendment/change order exceeds the maximum amounts herein, the amount of the amendment/change order must be approved by the Town Commission. If the change is outside the scope of the original project or procurement as determined by the Finance Director, a new invitation to bid must be issued, unless an emergency or sole source situation exists. Should an emergency or sole source situation exist, a new contract with the existing contractor may be negotiated and presented to the town commission for approval, provided such contractor is qualified and available to perform on the new project, or is capable of securing the services of a qualified subcontractor. Extensions of time frames for completion of contracts may be authorized by the Finance Director.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-103)

Sec. 2-249. Competitive sealed proposal process.

~~When it is determined and documented in writing by the using department and the finance director that the use of a competitive sealed bidding is either not practical or not advantageous to the town, due to the technical or specialized nature of the goods and/or services sought, the town may utilize the following competitive proposal processes as an alternative to the competitive bid process:~~

~~(1) Requests for proposal (RFP) or requests for information (RFI). Setting forth the terms and conditions of the goods and/or services sought including evaluation factors shall be issued.~~

~~a. Notice. Adequate notice shall be published in a newspaper of general circulation in the county for a reasonable time prior to the time set for the submission of responses and shall be mailed to all parties on the applicable vendor list.~~

~~b. Submission. Proposals must be received no later than the specified time, date and at the location specified for submission in the request for proposal or request~~

~~for information. No proposal shall be accepted after such time or at any other location than specified; any proposal received later or at any other location than specified shall be returned unopened.~~

~~e. *Proposal cancellation or postponement.* The Finance director may, prior to a request for proposal or request for information submission, elect to cancel or postpone the date and/or time for submission.~~

When it is determined by the Town Manager that the use of competitive sealed bidding is either not practical or not advantageous to the Town, the competitive proposal process may be used as an alternative to the competitive bid process.

- (a) **Public Notice:** Public notice of the Request for Proposal or Request for Statement of Qualification shall be given in the same manner as provided for competitive sealed bidding except all RFP or RFQ require a minimum of thirty (21) days for submission of proposals unless determined by the Finance Director to be not in the best interest of the Town.
- (b) **Evaluation Factors:** The Request for Proposals shall state the relative importance of price and other evaluation factors as listed in the Request for Proposal.
- (c) **Submission:** Proposals must be received no later than the specified time and date and at the location specified for submission in the Request for Proposal (RFP) or Request for Statement of Qualifications (RFQ). No proposal shall be accepted after such time or at any other location than specified; any proposal received later or at any other location than specified shall be returned unopened.
- (d) **Proposal Cancellation or Postponement:** The Town Manager, Finance Director or designee may, prior to the RFP or RFQ due date, elect to cancel or postpone the date and/or time for submission or opening. In such situations an addendum will be issued.
- (c) **Discussion with Responsible Proposer and Revisions to Proposals:** As provided in the Request for Proposals, discussions may be conducted with any responsible proposer who submits a proposal determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Proposer shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no exchange of information regarding the content or feasibility of the proposals by competing vendors.

~~(2) PROPOSAL EVALUATION.~~

~~a. Award shall be made to the most responsive, responsible offeror whose proposal is determined to be the most advantageous to the town in accordance with the evaluation criteria contained in the request for proposal or to the most qualified firm in the case of a request for information. Evaluation of offerors and/or proposals may be made in a multistep selection or bidding process as set forth in the request for proposal or request for information and shall be based upon factors of responsibility set forth in section 2-248(h)(2) and upon factors of responsiveness and quality based upon criteria set forth in~~

~~the request for proposal or request for information. The request for proposal or request for information shall state the relative importance of price and other criteria.~~

~~b. As provided in the request for proposal, discussions may be conducted with responsible offerors who submit proposals for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers in conducting discussions. There shall be no exchange of information regarding the content or feasibility of the proposals by competing offerors.~~

- (f) Proposal Evaluation: Award shall be made to the most responsive, responsible proposer whose proposal is determined to be the most advantageous to the Town in accordance with the evaluation criteria contained in the RFP/RFQ. Evaluation of proposals may be made in a multi-step selection process as set forth in the RFP or RFQ.

~~(3) Award: Notice of the intent to award shall be posted at the location set for proposal submission. The award shall be made in accordance with the provisions of section 2-248(i). The contract file shall contain the basis on which the award is made.~~

- (g) Award: Notice of the intent to award shall be posted at the location set for proposal submission.
- (1) The Town reserves the right to conduct negotiations with two (2) or more proposers who respond to an RFP.
- (2) Negotiations involving the Consultants Competitive Negotiation Act (CCNA) will be conducted by a team selected by the Purchasing Agent.
- (h) Proposal vs. Bid: All of the guidelines specified for Invitation to Bid will apply to Request for Proposals unless otherwise stated in the guidelines for Request for Proposals.
- (i) Consultant Services: Consultant Services for services other than for architecture, engineering, landscape architectural or surveying and mapping services are acquired in compliance with policies outlined in Invitation to Bid and/or Request for Proposal.
- (1) Architectural, engineering, landscape architectural or surveying and mapping services are acquired using Florida Statute, Section 287.55, known as the Consultants Competitive Negotiation Act (CCNA).
- (2) Design build contracts shall be established in compliance with Florida Statute, Section 287.055, known as the Consultants Competitive Negotiation Act (CCNA).
- (j) Continuing Consultant Services: The Consultant's Competitive Negotiation Act (CCNA) does not provide criteria for negotiating a contract for Continuing Consultant Services. The Town has established selection criteria among consultants under Continuing Consultant Services Contracts. Consultant Services required for any project, which is within the scope of a

Continuing Service Contract with the Town, which services are within the scope of the Consultant Competitive Negotiations Act, shall be awarded as follows:

- (1) The Town Manager and Department Head in charge of the project for which such services are required shall determine which of the service providers then under continuing contract with the Town are potentially capable of providing the required services.
- (2) The Town Manager or Finance Director shall then request each such provider submit a proposed Scope of Services and a fee quotation. The Department Head shall review the proposals received. In the event he/she determines it to be in the best interest of the Town, prior to completing his/her review, to enter into negotiations with any service provider which has submitted a proposal with respect to the proposed scope of services, the proposed fee, or both, in order to have the project completed in the most efficient and economical manner possible; upon the conclusion of any such negotiations, the department head shall complete review of the proposals.
- (3) Upon completion of the proposals review, the Department Head shall prepare and submit to the Finance Director and Town Manager his/her recommendation as to which service provider should, in his/her professional judgment, receive authorization to perform the work. In making such determination he/she shall take into account factors set forth in Florida Statute, Section 287.055 (4)(b), with respect to service providers then under continuing contracts with the Town and the price for which the services are to be rendered.
- (4) The Town Manager will be the approving authority for all price proposals under ten thousand dollars (\$10,000.00); for all price proposals over ten thousand dollars (\$10,000.00) the Town Manager will review and make his/her recommendation to the Town Commission for approval.

(Ord. No. 9-1996, § 11, 9-18-1996; Code 1978, § 2-104)

Sec. 2-250. Alternative source selection.

(a) *Small purchases.* Any purchase for an amount less than the mandatory bid amount may be made in accordance with those procedures promulgated in the Code; provided, however, no purchase shall be artificially divided so as to constitute a purchase for an amount less than the mandatory bid amount.

(b) *Sole source purchases.* The Town Manager ~~finance director~~ may make or authorize a purchase without competitive bid when the appropriate department head has documented in writing that such good and/or service is the only item that meets the need and is available through only one source of supply. Sole source purchases greater than ~~\$3,999.99~~ \$5,000.00 must be approved by the Town Manager. In addition, all sole source purchases exceeding the mandatory bid amount shall be approved by the Town Commission. Written determinations documenting sole source purchases shall be retained for a period of at least three years.

(c) *Emergency purchases.* The Town Manager or the Finance Director may make or authorize emergency purchases as defined herein. The appropriate Department Head shall document in writing that such good and/or service needs to be purchased on and shall be approved by the Town Commission. Written determinations documenting emergency purchases shall be retained for a period of at least three years.

(d) *Cooperative purchases.* Notwithstanding any requirements of this division, the Town Manager or the Finance Director may purchase goods and/or services under contract with the federal, state, or municipal governments or any other governmental agency or political subdivision providing the vendor extends the same terms and conditions of the contract to the town. Such purchases shall be subject to the approval levels specified in section 2-247.

(e) *Field purchase orders.* Field purchase orders may be utilized for purchases up to \$500.00. Field purchase orders do not require the preparation of a purchase requisition by the procuring department nor the approval of the Finance Director prior to the procurement of a commodity and/or service. The procuring department is responsible for ensuring that a competitive price is received for the commodity and/or service ordered, and that the budgetary appropriation for the commodity and/or service purchased is not over expanded. The Town Manager or the Finance Department shall determine the integrity of such purchases.

(f) ~~*Consultant services.*~~

~~(1) *Estimated value equal to or in excess of mandatory bid amount.* Consultant services as defined herein when the estimated fee is equal to or in excess of the mandatory bid amount may be acquired through an invitation to bid or through the competitive sealed proposal process, provided the basis for this method of source selection is documented.~~

~~(2) *Estimated value less than the mandatory bid amount.* The procurement of consultant services as defined herein when the estimated fee is less than the mandatory bid amount shall be awarded in accordance with procedures promulgated in section 2-247.~~

~~(g) *Professional architectural, engineering, landscape architectural, design build and surveying and mapping services.* The procurement of professional services as listed in the above title shall be made in accordance with F.S. § 287.055.~~

(f) *Construction services.* The procurement of construction services by the Town and the Community Redevelopment Agency shall be acquired in accordance with the competitive sealed bid process outlined in section 2-248.

(1) Bid security shall be required for all competitive sealed bidding for construction contracts when the total cost of construction is estimated by the Town Manager or the Finance Director to exceed \$100,000.00. Bid security shall be an original bid bond executed by a surety company admitted and authorized to do business in the State of Florida. Cash, a certificate of deposit, treasurer's check, or a certified cashier's check satisfactory to the Town may be tendered in lieu of the bid bond. Nothing contained herein shall prevent the Town from requiring bid security on construction contracts under \$200,000.00 as determined in the discretion of the Town Manager to be in the best interest of the Town. Bid security shall be in an amount deemed sufficient by the Town Manager to insure bid compliance but in no event shall the bid security be less than five percent of the bid amount.

(2) Bids or proposals which are submitted without the required bid security shall be rejected.

(3) Any person, firm or entity who enters into a written construction contract with the Town which is for \$200,000.00 or more, shall before commencing the work, execute and deliver to the Town within the time specified by the contract or procurement documents, a payment and performance bond, each in the amount equal to or greater than 100 percent of the total contract price, unless the amount of the bonds is reduced to a lesser amount as determined by the Town Commission, but in no event shall the amount of each bond be less than 100 percent of the total contract price. The bonds shall be issued by a surety insurer authorized to do business in the State of Florida as a surety. The required bonds shall also be recorded in the public records of Palm Beach County. At the discretion of the Town Commission, any person or entity entering into a construction contract which is for \$200,000.00 or less may be exempted from executing the payment and performance bond.

(4) In lieu of the bond required by this section, a contractor may file with the Town an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in F.S. Ch. 625, pt. II. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond required by this section. The determination of the value of an alternative form of security shall be made by the Town Manager.

(5) The bond must state on its front page: the name, principal business address, and phone number of the contractor, the surety, the owner of the property being improved, and, if different from the owner, the contracting public entity; the contract number assigned by the contracting public entity; and a description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement. Such bond shall be conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract and promptly making payments to all persons defined in F.S. § 713.01, as amended, who furnish labor, services, or materials for the prosecution of the work provided for in the contract.

(6) If at any time after the execution of the contract and the surety bonds, the Town deems the surety or sureties upon such bonds to be unsatisfactory or, if for any reason such bonds cease to be adequate to cover the requirements of the contract, the Town may require the contractor, at its sole expense and within five days after the receipt of notice from the Town, to furnish an additional bond in such form and amount and with such surety as shall be satisfactory to the Town. In such event, no further payment to the contractor shall be deemed to be due under the contract until such new or additional security shall be furnished in manner and form satisfactory to the Town as to protect the interests of the Town and ensure the payment of persons supplying labor and materials under the contract. Final payment of all construction projects shall be approved by the Town Manager ~~finance director~~ after certification of completion from the Community Development Director.

(7) Nothing herein shall prohibit the Town from deleting line items within the invitation to bid and purchasing said items directly from a supplier in an amount not exceeding the bid amount per line item of the successful bidder, without further bidding, in an effort to benefit from the Town's tax exempt status.

(Ord. No. 9-1996, § II, 9-18-1996; Ord. No. 1-2000, § I, 2-2-2000; Code 1978, § 2-105; Ord. No. 01-2007, § 2, 3-7-2007)

Sec. 2-251. Contract document.

(a) *General provisions.* Every procurement of contractual services shall be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services, which provisions and conditions shall not be limited to:

(1) A provision that bills for fees or other compensations for services or expenses be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

(2) A provision allowing unilateral cancellation by the agency for the refusal by the contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of F.S. ch. 119 and made or received by the contractor in conjunction with the contract.

(3) Where feasible, a provision dividing the contract into units of deliverables, which shall include, but not be limited to, reports, findings, and drafts, that must be received and accepted in writing by the contract manager prior to payment.

(4) A provision specifying the criteria and the final date by which such criteria must be met for completion of the contract.

(5) Where applicable, a provision specifying that the contract may be renewed on a yearly basis for a maximum of two years after the initial contract, the terms under which the cost may change as determined in the invitation to bid or request for proposal; and that renewals shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of appropriate funds.

(b) **SIGNING OF WRITTEN AGREEMENT.** The written agreement shall be signed by the Town Manager and/or the Mayor and the contractor prior to the rendering of any contractual service, except in the case of a valid emergency as certified by the Town Manager.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-106)

Sec. 2-252. Protested solicitations and awards.

(a) **RIGHT TO PROTEST.** Any actual, or prospective bidder or proposer who is allegedly aggrieved in connection with the solicitation or pending award of a contract may protest to the Finance Director.

(b) **NOTICE.**

(1) A notice of bid protest must be submitted no later than 5:00 p.m., local time, three business days after the bid award. The protest must be in writing, and must identify the protestant and the solicitation involved, and shall include a factual summary of the basis of the protest.

~~(2) A formal written protest must be filed no later than 5:00 p.m., local time, five business days after the date of filing the notice of protest. The formal written protest shall:~~

- ~~a. Identify the protestant and the solicitation involved;~~
- ~~b. Include a clear statement of the grounds on which the protest is based;~~
- ~~c. Defer to the statutes, laws, ordinances, or other legal authorities which the protestant deems applicable to such grounds; and~~
- ~~d. Specifically request the relief to which the protestant deems itself entitled by application of such authorities to such grounds.~~

~~The protestant shall mail a copy of the notice of protest and the formal written protest to any person with whom protestant is in dispute and shall provide the finance director with evidence of such mailing.~~

(2) Formal bid protest submission. A formal written protest must be filed at the office of the Finance Director no later than 5:00 p.m., local time, within five business days after the date of filing the notice of bid protest. The formal written bid protest shall contain at a minimum the following information:

- a. Identification of ~~Identify~~ the name, address and contact information of the ~~and protestor protestant~~ and the solicitation involved;
- b. ~~Include a~~ A clear, brief, statement of the facts, legal arguments, and other grounds on which the protest is based;
- c. Identification of any applicable ~~Defer to the~~ statutes, laws, or ordinances, or other legal authorities which the protestor ~~protestant~~ deems applicable to the protest ~~such grounds~~; and
- d. ~~Specifically request the~~ Clearly state, in writing, the specific nature of the relief requested by to which the protestor, protestant, deems itself entitled by application of such authorities to such grounds.
- e. Any additional written or physical materials, objects, statements, and arguments, which the protestor deems relevant to the issues raised in the request for review.

The protestant shall mail a copy of the notice of protest and the formal written protest to any person with whom the protestant is in dispute, and shall provide the Town Manager with evidence of such mailing.

(3) A formal written protest is considered filed with the Town when it is received by the Finance Director. Accordingly, a protest is not timely filed unless it is received by the Finance Department within the times specified above. Failure to file a written notice of protest and subsequent formal written protest within the time period specified shall result in relinquishment of all rights of protest by the vendor and abrogation of any further bid protest proceedings.

(4) These protest procedures shall be the sole remedy for challenging an award of bid or proposal. Bidders and proposers are prohibited from attempts to influence, persuade or promote through any other channels or means. Such attempts shall be cause for suspension in accordance with section 2-253(a).

(c) *Authority to resolve.* The Finance Director shall attempt to resolve the protest in a fair and equitable manner, and shall render a written decision within 10 business days to the protestant. The protestant may appeal such decision, in writing to the Finance Director within five business days of the date of the written decision, whereby a protest committee, comprised of the Finance Director, Town Manager, Town Attorney, and the Department Head of the using department, shall have the authority to settle and resolve the protest.

(d) *Proceedings.* The Finance Director shall serve as the presiding officer of the protest committee in a nonvoting capacity. The Town Clerk shall give reasonable notice to all substantially affected persons or businesses prior to the date scheduled to consider the appeal of the protest.

(1) At or prior to the protest proceeding, the protestant may submit any written or physical materials, objects, statements, affidavits, and arguments which the protestant deems relevant to the issues raised.

(2) In the proceeding, the protestant, or its representative or counsel, may also make an oral presentation of the evidence and arguments. However, neither direct nor cross examination of witnesses will be permitted, although the presiding officer and other committee members may make whatever inquiries deemed pertinent to a determination of the protest.

(3) The judicial rules of evidence shall not apply and the committee shall base its decision on such information adduced in the course of the proceeding upon which reasonable prudent persons rely in the conduct of their affairs.

(4) A quorum of the committee consists of a majority of committee members. A decision shall be rendered by a majority vote of the committee members in attendance.

(5) If it is deemed that the solicitation or award is in violation of law or the procedures outlined in this resolution, the solicitation or award shall be cancelled or revised.

(6) If it is determined that the solicitation or award should be upheld, the Finance Director shall promptly issue a decision on behalf of the committee in writing stating the reason for the action with a copy furnished to the protestant and all substantially affected persons or businesses. The decision shall be final and conclusive as to the Town. Any

party may arrange for the proceedings to be stenographically recorded, and shall bear the expense of such recording. The proceedings shall be open to the general public.

(e) *Stay of procurement during protests.* In the event of a timely protest, the Finance Director shall not proceed further with the solicitation or with the pending award of the contract until the Finance Director, with the advice of the Town Attorney and after consultation with the using department makes a determination that the award of the contract without delay is necessary to protect substantial interests of the Town.

(f) *Reservation of powers to settle actions pending before the courts.* Nothing in this section is intended to affect the existing powers of the Town Commission to settle actions pending before the courts.

(g) *Damages.* In the event of the court upholding the protestant's claim, the court awarded damages on behalf of the protestant shall be solely limited to bid/proposal preparation costs.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-107)

Sec. 2-253. Suspension and debarment.

(a) *Authority.* The Finance Director may suspend or debar for cause the right of a vendor to be included on a vendor list and any bid or response from that vendor rejected; provided, however, the Commission shall have the power to waive or lift such suspension or debarment.

(b) *Suspension.* A vendor may be suspended for a period not to exceed two years as determined by the Finance Director based upon the following:

(1) Vendor defaults or fails to fully comply with the conditions, specifications, or terms of a bid, quotation, proposal or contract with the Town;

(2) Vendor commits any fraud or misrepresentation in connection with a bid, quotation proposal or contract with the Town;

(3) Vendor is charged by a court of competent jurisdiction with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(4) Vendor is charged by a court of competent jurisdiction with the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a town government contractor. If charges are dismissed or the vendor found not guilty, the suspension shall be lifted automatically upon written notification and proof of final court disposition provided by the vendor to Town;

(5) Vendor becomes insolvent, has proceedings in bankruptcy instituted against it, or compounds its debts or assigns over its estate or effects for payment thereof, or has a receiver or trustee appointed over its property;

(6) Vendor commission or any act or omission to perform any act which is grounds for debarment;

- (7) Vendor violates the ethical standards set forth in local, state, or federal law;
- (8) Vendor fails to comply with the minority business enterprise participation or minority business enterprise requirements of an awarded contract; or
- (9) Any other cause the Finance Director determines to be so serious and compelling as to materially and adversely affect responsibility of a business as a town government contractor, including but not limited to suspension by another governmental entity for substantial cause.

(c) *Debarment.* A vendor may be permanently debarred for the following:

- (1) Default or failure to fully comply with the conditions, specifications, drawings, or terms of a bid, proposal or contract with the Town twice in any three-year period.
- (2) Conviction by or judgment obtained in a court of competent jurisdiction for commission of those offenses in connection with the vendor's commercial enterprise stated in subsections (b)(3) and (b)(4) of this section. If the conviction or judgment is reversed through the appellate process, the debarment shall be removed immediately upon written notification and proof of final court disposition from the vendor to the Town.

(d) *Decision.* After the Finance Director has determined there is cause to suspend or debar a vendor, the Finance Director shall notify the vendor in writing of the debarment or the period of suspension and the reasons for the action taken.

(e) *Public entity crime.* Any vendor who has been convicted of a public entity crime, as defined by F.S. § 287.133, shall not be able to transact business with the Town to the extent as specified in F.S. § 287.133(3)(a).

(f) *Finality of decision.* The suspension or debarment shall be final and conclusive unless the suspended or debarred vendor initiates protest proceedings pursuant to section 2-252 within 21 days after the date of notification.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-108)

Sec. 2-254. Inspections and tests.

(a) The Finance Director or appropriate Department Head may inspect, or arrange for the inspection of, all deliveries of supplies, materials, equipment or contractual services to determine conformance with specifications set forth in the order of contract.

(b) Any using department which has the staff and facilities for adequate inspection may be authorized by the Finance Director to inspect deliveries made to it.

(c) The Finance Director shall have the authority to require chemical and/or physical tests or samples submitted with bids and, samples of deliveries which are necessary to determine their quality and conformance with the specifications. For such tests, the Finance Director shall have the authority to make use of any facilities of the Town where such tests may be competently performed or an outside laboratory may be utilized. Should the product fail such testing, the Town may require the vendor to pay the town for any expense incurred in testing.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-109)

Sec. 2-255. Equal opportunity/minority and women business enterprises.

(a) The Town shall use its best efforts to ensure that minority and women businesses shall have an equitable opportunity to participate in the Town's procurement process and that no business shall be excluded from participation in, denied benefits of, or otherwise discriminated against in connection with the award and performance of any contracts with the Town because of race, color, religion, natural origin, age, sexual orientation, gender, marital status, handicap or physical impairment.

(b) This division shall be read consistently with the Florida Civil Rights Act, F.S. ch. 760, and shall not repeal existing or subsequently enacted town minority/women business enterprise ordinances.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-110)

Sec. 2-256. Conflict of interest.

(a) The standards of conflict for public offices, employees, government and attorneys as set forth in F.S. § 112.313 are hereby adopted and incorporated herein by reference as if fully set forth herein.

(b) The Finance Director, every member of the Finance Director's staff, and any employee of the Town engaged in the procurement of goods and/or services are prohibited from accepting or receiving any money, rebate, gift or anything of value or any promise of future reward or compensation, from any person, firm or corporation to which any purchase or contract may be awarded. This prohibition shall not apply to holiday gifts with a value of \$25.00 or less.

(Ord. No. 9-1996, § II, 9-18-1996; Code 1978, § 2-110.1)

Secs. 2-257--2-280. Reserved.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 4. Repeal of Laws in Conflict. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Codification. The Sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "Ordinance" may be changed to "section", "article", or any other appropriate word.

Section 6. Effective Date. This Ordinance shall take effect immediately upon adoption.

Upon First Reading this 1 day of April, 2009, the foregoing Ordinance, was offered by Commissioner Osterman who moved its approval. The motion was seconded by Vice-Mayor Carey and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	/	_____
COMMISSIONER ED DALY	/	_____
VICE MAYOR JEFF CAREY	/	_____
COMMISSIONER PATRICIA OSTERMAN	/	_____
COMMISSIONER KENDALL RUMSEY	/	_____

PUBLISHED IN THE PALM BEACH POST THIS 5 DAY OF April, 2009

Upon Second Reading this 15 day of April, 2009, the foregoing Ordinance, was offered by Commissioner Osterman who moved its adoption. The motion was seconded by Vice-Mayor Carey, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	/	_____
COMMISSIONER ED DALY	ABSENT	_____
VICE MAYOR JEFF CAREY	/	_____
COMMISSIONER PATRICIA OSTERMAN	/	_____
COMMISSIONER KENDALL RUMSEY	/	_____

The Mayor thereupon declared **Ordinance No. 07-2009** duly passed and adopted this 15 day of April, 2009.

TOWN OF LAKE PARK, FLORIDA

BY: Desca DuBois
Mayor, Desca DuBois

ATTEST:

Vivian M. Lemley
Town Clerk, Vivian M. Lemley
(Town Seal)
TOWN OF LAKE PARK
SEAL

Approved as to form and legal sufficiency:

Thomas J. Baird
Town Attorney, Thomas J. Baird

FLORIDA