

PROPOSED NEW PURCHASING ORDINANCE

ORDINANCE NO. *****

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, REPEALING IN ITS ENTIRETY CHAPTER 2, ARTICLE V, DIVISION 2, ENTITLED "PURCHASING", AND REPLACING AND READOPTING IT AS REVISED DIVISION 2; PROVIDING FOR SEVERABILITY; 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 Manager has determined that it is necessary and appropriate for the Town to update and establish procedures and methods for procurement to be followed by the Town regarding its purchase goods and services; and

WHEREAS, the use of competitive procurement methods generally obtains the best price and maximize the value of public funds in procurements; and

WHEREAS, the procurement methods and procedures applied herein-would provide a fair and equitable process for the treatment of persons and entities who seek to provide goods and/or services to the Town, and also would maintain quality and integrity in the administration of the procurement of goods and services; and

WHEREAS, the Town Manager has recommended to the Town Commission that it update Chapter 2, Article V, Division 2 pertaining to the procurement of goods and services.

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 legislative findings of the Town Commission.

Section 2. Chapter 2, Article V, Division 2, is hereby amended ~~repealed in its entirety~~
and is replaced with a new Division 2, as follows:

DIVISION 2. PURCHASING

Sec. 2-241. General purpose.

The purpose of this division is to promote efficient procedures for the purchase of goods and services; to provide for a fair and equitable process for businesses and persons who seek to provide goods or services to the Town; and to maximize the value of public funds. The procurement of goods and services shall be conducted by adhering to the highest standards of ethics, professionalism and impartiality.

Sec. 2-242. 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:

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

Bid: A formal written price offer by an Offeror to the town to furnish specific goods and/or services in response to an invitation to bid.

Bid award: A contract and/or purchase order to the selected Offeror to provide specific commodities and/or services to the town for which funds have been appropriated by the Commission.

~~*Bid criteria:* The basis upon which the town will rely to determine acceptability of a bid, as stated in the bid, 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.~~

Certificate of contract completion: A form which indicates that a project has been satisfactorily completed and the Offeror 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: 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 Offeror, 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.

Commodities: As defined in § 287.012(5), F.S.

Consultants Competitive Negotiation Act: As defined in § 287.055, F.S. and which is only applicable to the acquisition of architectural, engineering, landscape architectural or surveying and mapping services. Note: as defined therein this statute applies where the estimated cost of the professional services associated with planning or study activity exceeds \$35,000.00, or where the estimated project construction cost exceeds \$325,000.00.

Continuing contract: A “continuing contract” is as defined in F.S. Section 287.055(g).

Cooperative purchasing: A form of intergovernmental cooperative purchasing in which an entity will extend the price and terms of a contract entered into by a larger entity. Generally, a larger entity will competitively award a contract that will include language allowing for other entities to utilize the contract which may be to their advantage in terms of pricing, thereby gaining economies of scale that normally they would not receive if they competed on their own.

Debarment: The exclusion, for cause, of an Offeror from bidding and/or receiving a contract to do business with the town.

Design-build contract: The solicitation for design services and construction pursuant to which a single contract is entered into for a capital improvement construction project.

Designee: A duly authorized representative of a person, business organization, or governmental agency.

Estimate: A stated expectation of price based upon time, quantity or other qualifiers.

Evaluation committee: A committee comprised of town employees established for the purpose of evaluating ~~bids and~~ proposals submitted in response to requests for proposals for purchases with an estimated cost exceeding \$35,000.00.

Invitation to bid: The- process to- be- used -when -the -scope -of -work- for- a contractual service can -be -clearly -defined -or -when -specifications -for -the -required goods can be precisely defined.

Minority business enterprise (certified): A business as defined by § 288.703 (1), F.S.

Minority person: A person as defined by § 288.703, F.S.

Notice to proceed: -A written notification from the town to an Offeror to establish and authorize an Offeror to commence work under the provisions of the contract.

Offeror: - A business or individual responding to an Invitation to Bid, Request for Qualifications, or Request for Proposals. (The Town's competitive solicitations may also refer to an Offeror for the purposes of a town competitive solicitation. the term Offeror is synonymous with the terms as a bidder, proposer or respondent.)

Originating department: The town department issuing an invitation to bid, request for proposals, statement or qualifications.

Palm Beach County Merchant: -A merchant whose primary place of business is located within the boundaries of Palm Beach County, Florida, and who has had a valid Palm Beach County Local Business Tax Receipt and has been operating its business for

Person: -Any business, individual, union, committee, club, or organization, or group of individuals.

Procurement: -Buying, purchasing, renting, leasing or otherwise acquiring any commodities and/or services for public purposes in accordance with state or town law. -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 medical services: -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.

Project manager: -A person designated by the Purchasing Agent to manage and to ensure compliance with contracts which he/she originates.

Proposal: -An executed formal document submitted by an Offeror 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: -A violation as defined in § 287.133(1)(g), F.S..

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 Offerors which may, at a minimum, include:

- (i) Posting public notice on the town's website; and
- (ii) Notice in a newspaper of general circulation.

Purchasing agent: The town manager, or his designee.

Request for a Quote: -An oral or written request for written pricing or services, or commodities.

Request for letters of interest: -A formal process whereby the town solicits written proposals from a pool of Offerors to provide services who will be listed as qualified and eligible to submit responses to a request for proposals or an invitation to bid.

Request for proposal: -A written or electronically posted solicitation for competitive sealed proposals.

Request for information: -A written or electronically posted request made by an agency to Offerors for information concerning commodities or contractual services. Also referred to as a Request for Qualifications (RFQ).

Responsible Offeror: –An Offeror who is determined to have the qualifications, integrity, reliability and capability in all respects to fully perform in accordance with the requirements of an invitation to bid, request for proposals, qualifications, or statements.

Responsive bid, proposal, or reply. A bid, or proposal, or reply submitted by an ~~offeror~~ Offeror which conforms in all material respects to the solicitation.

Sole Source: –The only existing source of the item or service which meets the needs of the originating department as determined by a reasonably thorough analysis of the marketplace.

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 qualifications. It may include a description of any requirement for inspecting, testing, or preparing a commodity, service, or construction item for delivery.

Surety: –A form of bid security in the form of ~~cash~~ certificate of deposit, cashier's check, or irrevocable letter of credit.

Suspension: The temporary debarment of an Offeror for up to three years.

Veteran business enterprise: Any business which meets the definition of § 295.187 (3), F.S. and which has been certified by the Florida Department of Management Services.

Sec. 2-243. Local Preference.

The town ~~may~~ **shall** give preference to proposals for goods and services received from Offerors whose business is located within the corporate limits of the town where price, quality and other relative factors offered by other Offerors are comparable.

Sec. 2-244. Exemptions.

This division shall not apply to:

1. The procurement of dues and memberships in trade or professional organizations; registration fees for trade and career fairs, subscriptions for periodicals and newspapers; advertisements; insurance brokerage; postage; legal and mediation services; professional medical services; services associated with the purchase or sale of real property; abstracts of title for real property; title searches and certificates; title insurance for real property; real estate appraisal services; water, sewer, telecommunications and electric utility services; copyrighted materials or patented materials including, but not limited to, technical pamphlets, published books, maps, testing or instructional materials; fees and costs of job-related seminars and training; admission fees for parks and entertainment activities included in Town recreational programs;
2. Agreements between the town and other government or nonprofit organizations that provide for the transfer, sale, or exchange of goods and services.
3. Goods purchased with petty cash or town procurement cards in accordance with the town's petty cash and procurement card procedures;

4. Items purchased for resale to the general public; for example supplies for a Town-owned concession area.
5. Purchase of food items;
6. Artistic services or works of art;
7. Travel expenses, hotel accommodations and hotel services;
8. Entertainment or entertainment-related services for town sponsored events;
9. Purchase of motor vehicle license plates from a governmental agency;
10. Persons or entities retained as "expert witnesses" pertaining to anticipated, threatened or actual litigation;
11. Educational or academic programs;
12. Recreational instructors and sports officials;
13. Banking and investment services including retirement investment services;
14. Proprietary software applications; and
15. Full or part-time contractual employees. ~~or independent contractors.~~

Provided, however, that ~~this~~ these exemptions shall not preclude the town from procuring such goods and/or services using the procedures listed in this article.

Sec. 2-245. Organization.

Except as otherwise provided herein, the Purchasing Agent or his designee as the town's Purchasing Agent shall be ultimately responsible for the procurement of all goods and services.

The Purchasing Agent shall:

1. Administer the purchasing functions of the town.
2. Implement the policies and procedures for the procurement of goods and services established in this division and applicable state law.
3. Purchase or contract for goods and services in accordance with provisions of this division.
4. Ensure that funds have been budgeted and appropriated prior to the execution of contracts or issuance of purchase orders for the procurement of goods and services.

Sec. 2-246. Thresholds for the procurement of goods and services.

The town commission hereby establishes \$35,000 as the threshold at which a formal competitive solicitation process shall be used, unless as otherwise provided for herein. A formal competitive solicitation process shall be employed for all invitations to bid, request for proposals, request for qualifications, or request for information. When employing these formal competitive solicitations, the invitation or request shall be published such that it is available simultaneously to all Offerors and shall include the time and date for the town's receipt of bids, proposals, and replies. All formal competitive solicitations shall include provisions relating to compliance with the regulations of the Palm Beach County Office of Inspector General.

1. For goods and services with a value greater than \$10,000, but less than \$35,000, the town manager or designee shall electronically post on the town's website a description of the goods and services being sought for at least seven (7) consecutive business days. The posted information shall include the scope of work, specifications for goods and the response forms to be used by Offerors in response to the request for quotation (RFQ).
2. For goods and services with a value between \$5,000 and \$9,999 at least three (3) written quotes shall be solicited.
3. For goods and services with a value between \$2,501 and \$4,999, the town shall solicit at least three (3) verbal quotes.
4. For the purchase of goods and services of less than \$2,500, the originating department may use a field purchase order (FPO) or Request for Disbursement. It is the responsibility of the originating 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 originating 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 \$2,500.00.
5. Purchase orders or contracts for goods or services with a value less than \$5,000 ~~must~~ may be approved by a department director. Purchase orders or contracts for goods or services that are between \$5,000 and \$9,999 must be approved by a department director and the Purchasing Agent. Purchase orders or contracts for goods or services that are greater than \$10,000 must be approved by the Town Commission. The originating department shall not make more than one purchase of the same item within five business days without proper approvals at each established approval threshold.
6. In lieu of using blanket written purchase orders for small dollar value purchases of less than \$1,000.00, departments are authorized to use electronic purchasing media, including bank issued purchasing cards (credit cards). The Purchasing

Agent or designee shall establish policies and procedures to ensure adequate internal controls for the use of the cards.

Sec. 2-247. Competitive sealed solicitation process.

- a. Unless otherwise provided herein, goods and services with a value of less than the threshold established in section 2-246 shall be procured through an informal competitive solicitation process to the extent practicable by soliciting quotes, or by using the alternative source selection methods specified in section 2-249.
1. Invitation to Bid: The bid process shall be used when the scope of work for a contractual service can be clearly defined or when specifications for the required goods can be precisely defined.
 2. Request for Proposals (RFP): An RFP shall be used when the purposes and uses for which the goods, group of goods, or contractual services can be defined and various combinations or versions of the goods and contractual services may be proposed by an Offeror to meet the specifications of the solicitation document.
 3. An RFP shall include terms and conditions, the scope of work, evaluation criteria and relative importance of price and other evaluation criteria, and whether an awarded contract is eligible to be renewed.
 4. A contract may be awarded to the responsible and responsive proposer whose proposal is determined to be the most advantageous to the town, taking into consideration the price and other evaluation criteria set forth in a RFP.

b. Tie bids: If two or more Oefferors are tied, the tie may be broken and the successful Oefferor selected by the following criteria presented in order of importance and consideration:

1. Quality of the items or services bid if such quality is ascertainable.
2. Delivery time if provided in the bids by the Oofferors.
3. If it is impossible with any reasonableness to determine if any of the above criteria have been met, or if application of the above criteria do not resolve the issue, the award will be given to that Oofferor whose bid was received earliest in time by the Ttown as indicated by the time clock stamp impressed upon the bid envelope of each offeror.

b.c. (b) — Services Governed by the Consultants' Competitive Negotiation Act

The procurement of professional architectural, engineering, landscape architectural, or surveying and mapping services shall be conducted in accordance with the requirements of

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§287.055, F.S., entitled the "Consultants' Competitive Negotiation Act."

e.d. Other Professional Services

The procurement of professional services not governed by the Consultants Competitive Negotiations Act shall be solicited in accordance with the Invitation to Bid, RFP or RFQ.

e. (d) The competitive sealed proposal solicitation process shall provide for:

1. 1. Public notice. -Public notice of an invitation to bid, RFP or RFQ shall be given in the same manner as provided for competitive sealed bidding except all Invitations to Bid, RFPs or RFQs. -The public notice shall allow at least 30 days for the submission of proposals unless the Purchasing Agent or designee determines that a notice of less than 30 days is in the best interests of the town. The public notice shall state the place, date and time where proposals are required to be submitted, and of the opening of proposals.
2. 2. Submission. -Proposals shall be submitted to the town no later than the specified time and date and at the location specified in the Invitation to Bid, RFP or RFQ. No proposal shall be accepted after such time, or at any other location than specified; any proposal received after the specified time and date, or to any location other than the location specified in the notice shall be returned unopened.
3. 3. Proposal cancellation or postponement. -The Purchasing Agent or designee may, prior to the due date of the RFP or RFQ, elect to extend, cancel or postpone the date and/or time for the submission of a RFP or RFQ. In such situations an addendum, or a notice of cancellation shall be issued.

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f. (e) Cone of Silence.

An ~~offeror~~Offeror shall not communicate with any elected or appointed town official or employee other than a person listed in the document soliciting bids or proposals prior to the time an award has been made by the town commission. Any communication between the ~~offeror~~Offeror and the town shall be submitted to the office of the town clerk, or of the official referenced in an Invitation to Bid, RFP or RFQ. Any violation of the Cone of Silence imposed herein shall be grounds for the disqualification of an ~~offeror~~Offeror.

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g. (f) Proposal evaluation.

Proposals ~~and bids~~ may be evaluated by an evaluation committee, which shall have not less than three voting members and shall be composed as follows: the originating department director who in conjunction with the Purchasing Agent appoints the chair and other members of the committee. Members of the evaluation committee shall not discuss the proposal or bid that they will be evaluating outside of the evaluation committee meeting.

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The Palm Beach County Inspector General shall be notified in writing prior to any duly noticed public meeting of the evaluation committee where any matter relating to the

procurement of goods or services by the town is to be discussed. Such notice shall be given to the Palm Beach County Inspector General as soon as possible after a meeting has been scheduled. Such notice shall also be given prior to any protest committee meetings.

An award shall be made to the most responsive, responsible ~~offeror~~Offeror whose proposal ~~or bid~~ is determined to be the most advantageous to the town in accordance with the evaluation criteria contained in the Invitation to Bid, RFP, RFI or RFQ. The evaluation of proposals shall be in accordance with the procedure established in an Invitation to Bid, RFP, ~~RFI~~ or RFQ.

h. (g) Award. Notice of the intent to award, along with a tabulation of the results of an evaluation, shall be posted by the town clerk on the town's website at least five business days prior to the commission's consideration of an award. The town clerk shall also provide all ~~offerors~~Offerors affected by the proposed award written notice of the intent to award by email at the same time as the notice of intent to award is posted on the town's website.

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i. (h) Continuing services contracts:

1. If there are two or more consultants which have been retained pursuant to a continuing services contract, the Purchasing Agent and department director of the originating department shall determine which firm is the most qualified to provide the required services.
2. The town may select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the town shall consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; and, recent, current, and projected workloads of the firms.

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Sec. 2-248. Responses to competitive solicitations.

a. General solicitations:

1. 1. A response to a competitive solicitation shall be submitted to the town clerk in a sealed envelope no later than the time and date at the location specified in the solicitation. Any response received after the deadline established in the solicitation, or which is submitted at a location other than at the location specified in the solicitation shall be deemed unresponsive and shall be returned unopened to the ~~offeror~~Offeror. It shall be the ~~offeror~~Offeror's sole responsibility to ensure that its response reaches the specified place for receipt of responses to solicitations and by the time specified in the solicitation document. The town shall bear no responsibility for any failure of the U.S. Postal Service, other courier service or a town employee to successfully deliver a response, or for a mistake in the delivery of a response to a location other than the location designated in the solicitation.

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2. 2. Responses to the solicitations shall be accepted from all qualified

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~~offerors~~Offerors except as otherwise provided herein and shall be evaluated based on the requirements set forth in the solicitation.

3. 3. The town may, at any time and in its sole discretion, reject all responses to solicitations and may or may not choose to seek solicitations in the future.

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4. 4. Responses to solicitations shall be opened publicly in the presence of one or more witnesses at the time and place specified in the solicitation. The town clerk or the clerk's designee shall officiate at the opening of competitive solicitations, and shall announce and record the name of each ~~offeror~~Offeror, if appropriate, recite the amount of each ~~offeror~~Offeror's response and such other information related to the solicitations as is appropriate.

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5. 5. All responses to solicitations shall become public records and shall be subject to public disclosure once opened.

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6. 6. An ~~offeror~~Offeror may withdraw a response to a solicitation prior to date and time designated in the solicitation for their opening. If an ~~offeror~~Offeror withdraws its response after the deadline established of a competitive solicitation, the purchasing agent may suspend an ~~offeror~~Offeror from participating in any future town solicitations for up to three years.

b. 7. Construction project solicitations:

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The procurement of contractors for the town's construction projects shall follow the competitive sealed bid process outlined in § 2-247.

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1. 1. Bid security shall be required for all competitive sealed bidding for town construction projects where the cost of construction is estimated to exceed \$ \$100,000.00 in the form of a bid bond executed by a surety company authorized to do business in the State of Florida. Alternatively, cash in the form of a certificate of deposit, cashier's check, or irrevocable letter of credit, may be tendered in lieu of the bid bond. The Purchasing Agent may require bid security for construction contracts of less than \$100,000.00 as determined in the discretion of the Purchasing Agent. The amount of the bid security shall be in an amount deemed sufficient by the Purchasing Agent to ensure bid compliance but in no event shall the bid security be less than five percent of the bid amount.

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2. 2. Any person, firm or entity that enters into a written construction contract exceeding \$100,000.00 shall execute and deliver to the town, prior to, or concurrent with, the execution of the contract, a performance bond, in an amount equal to or greater than 100 percent of the contract price. The bonds shall be issued by a surety insurer authorized to do business in the State of Florida as a surety. At the discretion of the Purchasing Agent, any person or entity entering into a construction contract which is for \$100,000.00 or less may be exempted from executing the payment and performance bond.

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3. 3. The surety must state on its front page: the name, principal business address, and phone number of the Offeror, 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 surety shall be conditioned upon the Offeror'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.

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4. 4. If at any time after the execution of the contract and the surety, the town deems the surety or sureties upon such surety to be unsatisfactory or, if for any reason such surety cease to be adequate to cover the requirements of the contract, the town may require the Offeror, at its sole expense and within five days after the receipt of notice from the town, to furnish an additional surety in such form and amount and with such surety as shall be satisfactory to the town. In such event, no further payment to the Offeror 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.

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5. 5. Nothing herein is intended to prohibit the acceptance of a voluntary reduction in price from the top ranked offeror after recommendation to award bid to that offeror, provided such reduction is not conditioned on, or does not result in, the modification or deletion of any specifications or conditions contained in the offeror's response to the solicitation.

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Sec. 2-249. Alternative Source Selection:

1. 1. Cooperative purchases: Purchases utilizing contracts of other Florida entities: Notwithstanding any requirements of this division, the purchase of goods and services under a contract with a Florida municipal governmental agency, federal, state or municipal government or any other governmental agency, political subdivision, or government-related association for the same scope of services may be made providing that the originating entity utilized a competitive process substantially similar to that used by the Town.

2. 2. Emergency Purchase: The Purchasing Agent may authorize an emergency purchase when a declaration of emergency has been issued or there is a threat of other substantial or potential loss to the Town that requires urgent action.

3. 3. Sole and Single Source Purchases: The Purchasing Agent may make or authorize the purchase of goods and services without competitive solicitation when the director of the department requesting the purchase has

documented in writing and provided information supporting the fact that the goods or service requested is the only item that meets the specified requirements and the goods or service is only available through one (1) source.

Sec. 2-250. Contract document.

a. ~~Contracts:~~

~~a. Contracts:~~

1. ~~1.~~—The procurement of goods or services shall be evidenced by a written contract or purchase order.
2. ~~2.~~—Contracts may be renewed or extended for a period not exceeding three (3) years, during the term, or upon the expiration of the term of the original contract.
3. ~~3.~~—Contract administration shall be the responsibility of the originating department with oversight by the Purchasing Agent.
4. ~~4.~~—Contract change orders shall be authorized in writing subject to Chapter 2, —Article III, Section 2-82 setting forth the purchasing authority of the —Purchasing Agent provided that the change does not materially alter the —character of the work contemplated by the contract and sufficient budgeted —funds are available.

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Sec. 2-251. Protested solicitations and awards.

- a. ~~1.~~—*Right to protest.* Any actual or prospective ~~offeror~~Offeror that is aggrieved in connection with a pending award of a contract may protest to the town's Purchasing Agent in accordance with the following procedures.

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1. ~~1.~~—The formal written protest must then be filed at the office of the Purchasing Agent no later than 5:00 p.m. Eastern Standard Time, within five business days after the date of ~~Posting of~~posting of the Notice of Intent to Award. The formal written protest shall contain at a minimum the following information:

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- i. ~~i.~~—Identification of the name, address and contact information of the ~~protestant~~protestor and the solicitation involved;
- ii. ~~ii.~~—A brief, statement of the facts and the legal basis for the protest;
- iii. ~~iii.~~—Identification of any applicable statutes, or ordinance(s), or other legal authority(ies) which the ~~protestant~~protestor deems applicable;

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iv. ~~iv.~~—A written statement indicating the specific nature of the relief requested by ~~protestant-protestor~~; and

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v. ~~v.~~—Any written or physical materials, or objects which the ~~protestant-protestor~~ deems relevant to the protest.

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2. e.—The formal written protest is considered timely filed upon its receipt by the Purchasing Agent within the time frame set forth herein. Failure to timely file a protest within the time specified herein shall result in relinquishment of all rights to protest an anticipated award.

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3. d.—Offerors shall not attempt to influence, persuade or promote communicating with any town elected or appointed official, or employee regarding the merits of their protest other than as set forth herein. Any attempt to do so shall be cause for suspension of the right to respond to the town's solicitation of goods or services in accordance with subsection 2-252(a).

b. 3.—*Authority to resolve.* The Purchasing Agent shall convene the protest committee, which shall consist of the Purchasing Agent, and two department directors from a department other than of the originating department. The Director of the originating department shall present such information as is necessary regarding the selection which led to the protest, and the originating department's position with respect to the protest. ~~and a third department director the Town Attorney which shall render its decision. The protestant may appeal this decision by sending a written notice to the Purchasing Agent within five business days of the protest committee's written decision.~~

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c. 4.—*Proceedings.* The protest committee shall meet in a public meeting. The town clerk shall give reasonable notice to all substantially affected ~~Offerors~~ prior to the date scheduled to consider the appeal of the protest. Although it is a public meeting, the only individuals permitted to address the protest committee are those representatives of the substantially affected offerors ~~Offerors, the protestor, and the originating department of the town~~ ~~offerors-individuals who constitute the Protestant-protestor.~~

1. a.—At least five business days prior to the protest committee's proceeding, the ~~protestant-protestor~~ may present the testimony or argument of its authorized representatives. ~~submit any written or physical materials, objects, statements, or affidavits, and submit any physical evidence arguments which the protestant-protestor deems relevant to the protest. In the proceeding, the protestant-protestor or its representatives-individuals constituting the protestor may make an oral presentation pertaining to the protest. The members of the protest committee may make whatever inquiries of those testifying or presenting evidence which they deem of the deemed pertinent to the resolution of the protest assist them in their final determination of the appeal outcome of the protest, of the finance director's decision. The protest committee shall then provide to the protestor its written decision whether to affirm or reject the bid protest, which written decision shall be final. of the protest committee shall be final.~~

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- d. ~~5.~~ *Stay of procurement during protests.* In the event of a timely protest, an award shall be postponed until the protest committee has rendered its written decision of the appeal.

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Sec. 2-252. Suspension and debarment.

- a. ~~1.~~ *Suspension.* An ~~offeror~~ Offeror may be suspended from submitting Invitations to Bid, RFPs or RFQs for five years from the date of the issuance of the procurement document and after all appeals have been exhausted for the following reasons:

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1. ~~a.~~ Offeror fails to fully comply with the conditions, specifications, or terms of a contract which has been awarded to the Offeror by the town;
2. ~~b.~~ Offeror commits any fraud or provides false information in connection with a bid, quotation, proposal or contract with the town;
3. ~~c.~~ Offeror is charged with the following crimes: 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. If charges are dismissed or the ~~offeror~~ Offeror is found not guilty, the suspension shall be lifted automatically upon written notification and proof of final court disposition provided by the ~~offeror~~ Offeror to town;
4. ~~d.~~ Offeror becomes insolvent, as evidenced by proceedings in bankruptcy;
5. ~~e.~~ Offeror violates the ethical standards set forth in local, state, or federal law;

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- b. ~~2.~~ *Debarment.* An ~~offeror~~ Offeror may be permanently debarred for the following reasons:

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1. ~~a.~~ 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. ~~b.~~ Placement of the ~~Offeror~~ Offeror on the convicted vendor list maintained by the Florida Department of Management Services within 36 months from the date of submittal of the bid or proposal.
3. ~~c.~~ *Decision.* After the Purchasing Agent has determined there is cause to suspend or debar an ~~Offeror~~ Offeror, the ~~Offeror~~ Offeror shall be given written notice of the debarment and the reasons for the action taken.

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Sec. 2-253. Inspections and tests.

1. ~~1.~~ The director of the originating department may inspect, or arrange for the inspection of all deliveries of supplies, materials, equipment or contractual services to confirm that they meet the specifications set forth in the bid documents and contract.

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2. ~~2.~~—Any originating department may inspect deliveries made to it.

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3. ~~3.~~—The director of the originating department may require chemical and/or physical tests or samples submitted with bids and samples of deliveries which are deemed necessary to determine their quality and conformance with the specifications. For such tests, the Purchasing Agent 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 offeror~~Offeror~~ to pay the town for any expense incurred in testing.

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Sec. 2-254. Equal opportunity/minority and women business enterprise.

1. ~~1.~~—The town shall use its best efforts to ensure that minority, women and veteran-owned 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 be otherwise discriminated against in connection with the award and performance of any contracts with the town because of race, color, religion, national origin, age, sexual orientation, gender, marital status, handicap or physical impairment.

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Sec. 2-255. Bid preferences.

a. Except with regards to contracts to be reimbursed by the Federal Emergency Management Agency, the town shall provide in its Invitations to Bid, RFP, or RFQ, a five percent bid preference for:

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1. ~~1.~~—Local merchants whose principal office is within the town's boundaries, and who have maintained a valid town business tax receipt for the previous two entire calendar years; or

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2. ~~2.~~—Certified minority or Florida veteran owned business enterprises pursuant to the Florida Office of Supplier Diversity and to certified minority owned business as defined by § 288.703, F.S.

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Sec. 2-256. Integrity in Public Contracting.

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Recognizing that the preservation of the integrity of the public contracting and purchasing process is vital and is a matter of interest to all the people of the state, the Town has declared that the procedures for determining with whom it will transact business exists to secure for the public the benefits of free, fair and open compensation. The opportunity to bid on public entity contracts or to supply goods and services to public entities or to otherwise transact business with public entities is a privilege not a right. In order to preserve the integrity of the public contracting and purchasing process, the privilege of responding to a public solicitation by the Town shall be denied to those individuals or entities who have been directly or indirectly involved in the development of that RFP, ITB or other public solicitation.

Secs. 2-257. Town Logo Infringement.

Any facsimile or reproduction of the Town of Lake Park municipal logo as adopted by ordinance 11-2010 shall be manufactured, used, displayed or otherwise employed by anyone only for official Town business or upon the written approval of the Town Commission.

The manufacture, use, display, or other employment of any facsimile or reproduction of the Town of Lake Park official logo without written approval of the Town Commission is a second degree misdemeanor, punishable as provided in S. 775.082 or S. 775.083. The use of the Town of Lake Park logo on any response to a solicitation shall make such response subject to rejection.

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Secs. 2-258~~67~~–2-2810. 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.

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Section 4. 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 5. Effective Date. This Ordinance shall take effect immediately upon adoption.

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ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, REPEALING IN ITS ENTIRETY CHAPTER 2, ARTICLE V, DIVISION 2, ENTITLED "PURCHASING", AND REPLACING AND READOPTING IT AS REVISED DIVISION 2; PROVIDING FOR SEVERABILITY; 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 Manager has determined that it is necessary and appropriate for the Town to update and establish procedures and methods for procurement to be followed by the Town regarding its purchase goods and services; and

WHEREAS, the use of competitive procurement methods generally obtains the best price and maximize the value of public funds in procurements; and

WHEREAS, the procurement methods and procedures applied herein would provide a fair and equitable process for the treatment of persons and entities who seek to provide goods and/or services to the Town, and also would maintain quality and integrity in the administration of the procurement of goods and services; and

WHEREAS, the Town Manager has recommended to the Town Commission that it update Chapter 2, Article V, Division 2 pertaining to the procurement of goods and services.

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 legislative findings of the Town Commission.

Section 2. Chapter 2, Article V, Division 2, is hereby amended as follows:

DIVISION 2. PURCHASING

Sec. 2-241. General purpose.

The purpose of this division is to promote efficient procedures for the purchase of goods and services; to provide for a fair and equitable process for businesses and persons who seek to provide goods or services to the Town; and to maximize the value of public funds. The procurement of goods and services shall be conducted by adhering to the highest standards of ethics, professionalism and impartiality.

Sec. 2-242. 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:

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

Bid: A formal written price offer by an Offeror to the town to furnish specific goods and/or services in response to an invitation to bid.

Bid award: A contract and/or purchase order to the selected Offeror to provide specific commodities and/or services to the town for which funds have been appropriated by the Commission.

Certificate of contract completion: A form which indicates that a project has been satisfactorily completed and the Offeror 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: 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 Offeror, 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.

Commodities: As defined in § 287.012(5), F.S.

Consultants Competitive Negotiation Act: As defined in § 287.055, F.S. and which is only applicable to the acquisition of architectural, engineering, landscape architectural or surveying and mapping services. Note: as defined therein this statute applies where the estimated cost of the professional services associated with planning or study activity exceeds \$35,000.00, or where the estimated project construction cost exceeds \$325,000.00.

Continuing contract: A “continuing contract” is as defined in F.S. Section 287.055(g).

Cooperative purchasing: A form of intergovernmental cooperative purchasing in which an entity will extend the price and terms of a contract entered into by a larger entity. Generally, a

larger entity will competitively award a contract that will include language allowing for other entities to utilize the contract which may be to their advantage in terms of pricing, thereby gaining economies of scale that normally they would not receive if they competed on their own.

Debarment: The exclusion, for cause, of an Offeror from bidding and/or receiving a contract to do business with the town.

Design-build contract: The solicitation for design services and construction pursuant to which a single contract is entered into for a capital improvement construction project.

Designee: A duly authorized representative of a person, business organization, or governmental agency.

Estimate: A stated expectation of price based upon time, quantity or other qualifiers.

Evaluation committee: A committee comprised of town employees established for the purpose of evaluating proposals submitted in response to requests for proposals for purchases with an estimated cost exceeding \$35,000.00.

Invitation to bid: The process to be used when the scope of work for a contractual service can be clearly defined or when specifications for the required goods can be precisely defined.

Minority business enterprise (certified): A business as defined by § 288.703 (1), F.S.

Minority person: A person as defined by § 288.703, F.S.

Notice to proceed: A written notification from the town to an Offeror to establish and authorize an Offeror to commence work under the provisions of the contract.

Offeror: A business or individual responding to an Invitation to Bid, Request for Qualifications, or Request for Proposals. (For the purposes of a town competitive solicitation, the term Offeror is synonymous with the terms bidder, proposer or respondent.)

Originating department: The town department issuing an invitation to bid, request for proposals, statement or qualifications.

Palm Beach County Merchant: A merchant whose primary place of business is located within the boundaries of Palm Beach County, Florida, and who has had a valid Palm Beach County Local Business Tax Receipt and has been operating its business for

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

Procurement: Buying, purchasing, renting, leasing or otherwise acquiring any commodities and/or services for public purposes in accordance with state or town law. 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 medical services: 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.

Project manager: A person designated by the Purchasing Agent to manage and to ensure compliance with contracts which he/she originates.

Proposal: An executed formal document submitted by an Offeror 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: A violation as defined in § 287.133(1)(g), F.S.

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 Offerors which may, at a minimum, include:

(i) Posting public notice on the town's website; and

(ii) Notice in a newspaper of general circulation.

Purchasing agent: The town manager, or his designee.

Request for a Quote: An oral or written request for written pricing or services, or commodities.

Request for letters of interest: A formal process whereby the town solicits written proposals from a pool of Offerors to provide services who will be listed as qualified and eligible to submit responses to a request for proposals or an invitation to bid.

Request for proposal: A written or electronically posted solicitation for competitive sealed proposals.

Request for information: A written or electronically posted request made by an agency to Offerors for information concerning commodities or contractual services. Also referred to as a Request for Qualifications (RFQ).

Responsible Offeror: An Offeror who is determined to have the qualifications, integrity, reliability and capability in all respects to fully perform in accordance with the requirements of an invitation to bid, request for proposals, qualifications, or statements.

Responsive bid, proposal, or reply. A bid, or proposal, or reply submitted by an Offeror which conforms in all material respects to the solicitation.

Sole Source: The only existing source of the item or service which meets the needs of the originating department as determined by a reasonably thorough analysis of the marketplace.

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 qualifications. It may include a description of any requirement for inspecting, testing, or preparing a commodity, service, or construction item for delivery.

Surety: A form of bid security in the form of certificate of deposit, cashier's check, or irrevocable letter of credit.

Suspension: The temporary debarment of an Offeror for up to three years.

Veteran business enterprise: Any business which meets the definition of § 295.187 (3), F.S. and which has been certified by the Florida Department of Management Services.

Sec. 2-243. Local Preference.

The town shall give preference to proposals for goods and services received from Offerors whose business is located within the corporate limits of the town where price, quality and other relative factors offered by other Offerors are comparable.

Sec. 2-244. Exemptions.

This division shall not apply to:

1. The procurement of dues and memberships in trade or professional organizations; registration fees for trade and career fairs, subscriptions for periodicals and newspapers; advertisements; insurance brokerage; postage; legal and mediation services; professional medical services; services associated with the purchase or sale of real property; abstracts of title for real property; title searches and certificates; title insurance for real property; real estate appraisal services; water, sewer, telecommunications and electric utility services; copyrighted materials or patented materials including, but not limited to, technical pamphlets, published books, maps, testing or instructional materials; fees and costs of job-related seminars and training; admission fees for parks and entertainment activities included in Town recreational programs;
2. Agreements between the town and other government or nonprofit organizations that provide for the transfer, sale, or exchange of goods and services.
3. Goods purchased with petty cash or town procurement cards in accordance with the town's petty cash and procurement card procedures;
4. Items purchased for resale to the general public; for example supplies for a Town-owned concession area.
5. Purchase of food items;
6. Artistic services or works of art;
7. Travel expenses. hotel accommodations and hotel services;
8. Entertainment or entertainment-related services for town sponsored events;
9. Purchase of motor vehicle license plates from a governmental agency;

10. Persons or entities retained as "expert witnesses" pertaining to anticipated, threatened or actual litigation;
11. Educational or academic programs;
12. Recreational instructors and sports officials;
13. Banking and investment services including retirement investment services;
14. Proprietary software applications; and
15. Full or part-time contractual employees.

Provided, however, that these exemptions shall not preclude the town from procuring such goods and/or services using the procedures listed in this article.

Sec. 2-245. Organization.

Except as otherwise provided herein, the Purchasing Agent or his designee as the town's Purchasing Agent shall be ultimately responsible for the procurement of all goods and services.

The Purchasing Agent shall:

1. Administer the purchasing functions of the town.
2. Implement the policies and procedures for the procurement of goods and services established in this division and applicable state law.
3. Purchase or contract for goods and services in accordance with provisions of this division.
4. Ensure that funds have been budgeted and appropriated prior to the execution of contracts or issuance of purchase orders for the procurement of goods and services.

Sec. 2-246. Thresholds for the procurement of goods and services.

The town commission hereby establishes \$35,000 as the threshold at which a formal competitive solicitation process shall be used, unless as otherwise provided for herein. A formal competitive solicitation process shall be employed for all invitations to bid, request for proposals, request for qualifications, or request for information. When employing these formal competitive solicitations, the invitation or request shall be published such that it is available simultaneously to all Offerors and shall include the time and date for the town's receipt of bids, proposals, and replies. All formal competitive solicitations shall include provisions relating to compliance with the regulations of the Palm Beach County Office of Inspector General.

1. For goods and services with a value greater than \$10,000, but less than \$35,000,

the town manager or designee shall electronically post on the town's website a description of the goods and services being sought for at least seven (7) consecutive business days. The posted information shall include the scope of work, specifications for goods and the response forms to be used by Offerors in response to the request for quotation (RFQ).

2. For goods and services with a value between \$5,000 and \$9,999 at least three (3) written quotes shall be solicited.
3. For goods and services with a value between \$2,501 and \$4,999, the town shall solicit at least three (3) verbal quotes.
4. For the purchase of goods and services of less than \$2,500, the originating department may use a field purchase order (FPO) or Request for Disbursement. It is the responsibility of the originating 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 originating 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 \$2,500.00.
5. Purchase orders or contracts for goods or services with a value less than \$5,000 may be approved by a department director. Purchase orders or contracts for goods or services that are between \$5,000 and \$9,999 must be approved by a department director and the Purchasing Agent. Purchase orders or contracts for goods or services that are greater than \$10,000 must be approved by the Town Commission. The originating department shall not make more than one purchase of the same item within five business days without proper approvals at each established approval threshold.
6. In lieu of using blanket written purchase orders for small dollar value purchases of less than \$1,000.00, departments are authorized to use electronic purchasing media, including bank issued purchasing cards (credit cards). The Purchasing Agent or designee shall establish policies and procedures to ensure adequate internal controls for the use of the cards

Sec. 2-247. Competitive sealed solicitation process.

- a. Unless otherwise provided herein, goods and services with a value of less than the threshold established in section 2-246 shall be procured through an informal competitive solicitation process to the extent practicable by soliciting quotes, or by using the alternative source selection methods specified in section 2-249.
 1. Invitation to Bid: The bid process shall be used when the scope of work for a contractual service can be clearly defined or when specifications for the required goods can be precisely defined.
 2. Request for Proposals (RFP): An RFP shall be used when the purposes and uses for which the goods, group of goods, or contractual services can be defined and

various combinations or versions of the goods and contractual services may be proposed by an Offeror to meet the specifications of the solicitation document.

3. An RFP shall include terms and conditions, the scope of work, evaluation criteria and relative importance of price and other evaluation criteria, and whether an awarded contract is eligible to be renewed.
 4. A contract may be awarded to the responsible and responsive proposer whose proposal is determined to be the most advantageous to the town, taking into consideration the price and other evaluation criteria set forth in a RFP.
- b. Tie bids: If two or more Offerors are tied, the tie may be broken and the successful Offeror selected by the following criteria presented in order of importance and consideration:
1. Quality of the items or services bid if such quality is ascertainable.
 2. Delivery time if provided in the bids by the Offerors.
 3. If it is impossible with any reasonableness to determine if any of the above criteria have been met, or if application of the above criteria do not resolve the issue, the award will be given to that Offeror whose bid was received earliest in time by the Town as indicated by the time clock stamp impressed upon the bid envelope of each Offeror.

c. Services Governed by the Consultants' Competitive Negotiation Act

The procurement of professional architectural, engineering, landscape architectural, or surveying and mapping services shall be conducted in accordance with the requirements of §287.055, F.S., entitled the "Consultants' Competitive Negotiation Act."

d. Other Professional Services

The procurement of professional services not governed by the Consultants Competitive Negotiations Act shall be solicited in accordance with the Invitation to Bid, RFP or RFQ.

e. The competitive sealed proposal solicitation process shall provide for:

1. Public notice. Public notice of an invitation to bid, RFP or RFQ shall be given in the same manner as provided for competitive sealed bidding except all Invitations to Bid, RFPs or RFQs. The public notice shall allow at least 30 days for the submission of proposals unless the Purchasing Agent or designee determines that a notice of less than 30 days is in the best interests of the town. The public notice shall state the place, date and time where proposals are required to be submitted, and of the opening of proposals.
2. Submission. Proposals shall be submitted to the town no later than the specified time and date and at the location specified in the Invitation to Bid, RFP or RFQ. No proposal shall be accepted after such time, or at any other location than specified; any proposal received after the specified time and date, or to any

location other than the location specified in the notice shall be returned unopened.

3. Proposal cancellation or postponement. The Purchasing Agent or designee may, prior to the due date of the RFP or RFQ, elect to extend, cancel or postpone the date and/or time for the submission of a RFP or RFQ. In such situations an addendum, or a notice of cancellation shall be issued.

f. Cone of Silence.

An Offeror shall not communicate with any elected or appointed town official or employee other than a person listed in the document soliciting bids or proposals prior to the time an award has been made by the town commission. Any communication between the Offeror and the town shall be submitted to the office of the town clerk, or of the official referenced in an Invitation to Bid, RFP or RFQ. Any violation of the Cone of Silence imposed herein shall be grounds for the disqualification of an Offeror.

g. Proposal evaluation.

Proposals may be evaluated by an evaluation committee, which shall have not less than three voting members and shall be composed as follows: the originating department director who in conjunction with the Purchasing Agent appoints the chair and other members of the committee. Members of the evaluation committee shall not discuss the proposal that they will be evaluating outside of the evaluation committee meeting.

The Palm Beach County Inspector General shall be notified in writing prior to any duly noticed public meeting of the evaluation committee where any matter relating to the procurement of goods or services by the town is to be discussed. Such notice shall be given to the Palm Beach County Inspector General as soon as possible after a meeting has been scheduled. Such notice shall also be given prior to any protest committee meetings.

An award shall be made to the most responsive, responsible Offeror whose proposal or bid is determined to be the most advantageous to the town in accordance with the evaluation criteria contained in the Invitation to Bid, RFP, RFI or RFQ. The evaluation of proposals shall be in accordance with the procedure established in an Invitation to Bid, RFP, RFI or RFQ.

- h. Award. Notice of the intent to award, along with a tabulation of the results of an evaluation, shall be posted by the town clerk on the town's website at least five business days prior to the commission's consideration of an award. The town clerk shall also provide all Offerors affected by the proposed award written notice of the intent to award by email at the same time as the notice of intent to award is posted on the town's website.

i. Continuing services contracts:

1. If there are two or more consultants which have been retained pursuant to a continuing services contract, the Purchasing Agent and department director of the originating department shall determine which firm is the most qualified to provide the required services.

2. The town may select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the town shall consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; and, recent, current, and projected workloads of the firms.

Sec. 2-248. Responses to competitive solicitations.

a. General solicitations:

1. A response to a competitive solicitation shall be submitted to the town clerk in a sealed envelope no later than the time and date at the location specified in the solicitation. Any response received after the deadline established in the solicitation, or which is submitted at a location other than at the location specified in the solicitation shall be deemed unresponsive and shall be returned unopened to the Offeror. It shall be the Offeror's sole responsibility to ensure that its response reaches the specified place for receipt of responses to solicitations and by the time specified in the solicitation document. The town shall bear no responsibility for any failure of the U.S. Postal Service, other courier service or a town employee to successfully deliver a response, or for a mistake in the delivery of a response to a location other than the location designated in the solicitation.
2. Responses to the solicitations shall be accepted from all qualified Offerors except as otherwise provided herein and shall be evaluated based on the requirements set forth in the solicitation.
3. The town may, at any time and in its sole discretion, reject all responses to solicitations and may or may not choose to seek solicitations in the future.
4. Responses to solicitations shall be opened publicly in the presence of one or more witnesses at the time and place specified in the solicitation. The town clerk or the clerk's designee shall officiate at the opening of competitive solicitations, and shall announce and record the name of each Offeror, if appropriate, recite the amount of each Offeror's response and such other information related to the solicitations as is appropriate.
5. All responses to solicitations shall become public records and shall be subject to public disclosure once opened.
6. An Offeror may withdraw a response to a solicitation prior to date and time designated in the solicitation for their opening. If an Offeror withdraws its response after the deadline established of a competitive solicitation, the purchasing agent may suspend an Offeror from participating in any future town solicitations for up to three years.

b. *Construction project solicitations:*

The procurement of contractors for the town's construction projects shall follow the competitive sealed bid process outlined in § 2-247.

1. Bid security shall be required for all competitive sealed bidding for town construction projects where the cost of construction is estimated to exceed \$ \$100,000.00 in the form of a bid bond executed by a surety company authorized to do business in the State of Florida. Alternatively, cash in the form of a certificate of deposit, cashier's check, or irrevocable letter of credit, may be tendered in lieu of the bid bond. The Purchasing Agent may require bid security for construction contracts of less than \$100,000.00 as determined in the discretion of the Purchasing Agent. The amount of the bid security shall be in an amount deemed sufficient by the Purchasing Agent to ensure bid compliance but in no event shall the bid security be less than five percent of the bid amount.
2. Any person, firm or entity that enters into a written construction contract exceeding \$100,000.00 shall execute and deliver to the town, prior to, or concurrent with, the execution of the contract, a performance bond, in an amount equal to or greater than 100 percent of the contract price. The bonds shall be issued by a surety insurer authorized to do business in the State of Florida as a surety. At the discretion of the Purchasing Agent, any person or entity entering into a construction contract which is for \$100,000.00 or less may be exempted from executing the payment and performance bond.
3. The surety must state on its front page: the name, principal business address, and phone number of the Offeror, 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 surety shall be conditioned upon the Offeror'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.
4. If at any time after the execution of the contract and the surety, the town deems the surety or sureties upon such surety to be unsatisfactory or, if for any reason such surety cease to be adequate to cover the requirements of the contract, the town may require the Offeror, at its sole expense and within five days after the receipt of notice from the town, to furnish an additional surety in such form and amount and with such surety as shall be satisfactory to the town. In such event, no further payment to the Offeror 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.

5. Nothing herein is intended to prohibit the acceptance of a voluntary reduction in price from the top ranked Offeror after recommendation to award bid to that Offeror, provided such reduction is not conditioned on, or does not result in, the modification or deletion of any specifications or conditions contained in the Offeror's response to the solicitation.

Sec. 2-249. Alternative Source Selection:

1. Cooperative purchases: Purchases utilizing contracts of other Florida entities: Notwithstanding any requirements of this division, the purchase of goods and services under a contract with a Florida municipal governmental agency, political subdivision, or government-related association for the same scope of services may be made providing that the originating entity utilized a competitive process substantially similar to that used by the Town.
2. Emergency Purchase: The Purchasing Agent may authorize an emergency purchase when a declaration of emergency has been issued or there is a threat of other substantial or potential loss to the Town that requires urgent action.
3. Sole and Single Source Purchases: The Purchasing Agent may make or authorize the purchase of goods and services without competitive solicitation when the director of the department requesting the purchase has documented in writing and provided information supporting the fact that the goods or service requested is the only item that meets the specified requirements and the goods or service is only available through one (1) source.

Sec. 2-250. Contract document.

a. Contracts:

1. The procurement of goods or services shall be evidenced by a written contract or purchase order.
2. Contracts may be renewed or extended for a period not exceeding three (3) years, during the term, or upon the expiration of the term of the original contract.
3. Contract administration shall be the responsibility of the originating department with oversight by the Purchasing Agent.
4. Contract change orders shall be authorized in writing subject to Chapter 2, Article III, Section 2-82 setting forth the purchasing authority of the Purchasing Agent provided that the change does not materially alter the

character of the work contemplated by the contract and sufficient budgeted funds are available.

Sec. 2-251. Protested solicitations and awards.

- a. *Right to protest.* Any actual or prospective Offeror that is aggrieved in connection with a pending award of a contract may protest to the town's Purchasing Agent in accordance with the following procedures.
1. The formal written protest must then be filed at the office of the Purchasing Agent no later than 5:00 p.m. Eastern Standard Time, within five business days after the date of posting of the Notice of Intent to Award. The formal written protest shall contain at a minimum the following information:
 - i. Identification of the name, address and contact information of the protestor and the solicitation involved;
 - ii. A brief, statement of the facts and the legal basis for the protest;
 - iii. Identification of any applicable statutes, or ordinance(s), or other legal authority(ies) which the protestor deems applicable;
 - iv. A written statement indicating the specific nature of the relief requested by protestor; and
 - v. Any written or physical materials, or objects which the protestor deems relevant to the protest.
 2. The formal written protest is considered timely filed upon its receipt by the Purchasing Agent within the time frame set forth herein. Failure to timely file a protest within the time specified herein shall result in relinquishment of all rights to protest an anticipated award.
 3. Offerors shall not attempt to influence, persuade or promote communicating with any town elected or appointed official, or employee regarding the merits of their protest other than as set forth herein. Any attempt to do so shall be cause for suspension of the right to respond to the town's solicitation of goods or services in accordance with subsection 2-252(a).
- b. *Authority to resolve.* The Purchasing Agent shall convene the protest committee, which shall consist of the Purchasing Agent, and two department directors from a department other than the originating department. The Director of the originating department shall present such information as is necessary regarding the selection which led to the protest, and the originating department's position with respect to the protest.

- c. *Proceedings.* The protest committee shall meet in a public meeting. The town clerk shall give reasonable notice to all substantially affected Offerors prior to the date scheduled to consider the appeal of the protest. Although it is a public meeting, the only individuals permitted to address the protest committee are those representatives of the substantially affected Offerors, the protestor, and the originating department of the town.
 - 1. At least five business days prior to the protest committee's proceeding, the protestor may present the testimony or argument of its authorized representatives, submit any written statements or affidavits, and submit any physical evidence which the protestor deems relevant to the protest. The members of the protest committee may make whatever inquiries of those testifying or presenting evidence which they deem pertinent to the resolution of the protest. The protest committee shall then provide to the protestor its written decision whether to affirm or reject the bid protest, which written decision shall be final.
- d. *Stay of procurement during protests.* In the event of a timely protest, an award shall be postponed until the protest committee has rendered its written decision of the appeal.

Sec. 2-252. Suspension and debarment.

- a. *Suspension.* An Offeror may be suspended from submitting Invitations to Bid, RFPs or RFQs for five years from the date of the issuance of the procurement document and after all appeals have been exhausted for the following reasons:
 - 1. Offeror fails to fully comply with the conditions, specifications, or terms of a contract which has been awarded to the Offeror by the town;
 - 2. Offeror commits any fraud or provides false information in connection with a bid, quotation, proposal or contract with the town;
 - 3. Offeror is charged with the following crimes: 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. If charges are dismissed or the Offeror is found not guilty, the suspension shall be lifted automatically upon written notification and proof of final court disposition provided by the Offeror to town;
 - 4. Offeror becomes insolvent, as evidenced by proceedings in bankruptcy;
 - 5. Offeror violates the ethical standards set forth in local, state, or federal law;
- b. *Debarment.* An Offeror may be permanently debarred for the following reasons:
 - 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. Placement of the Offeror on the convicted vendor list maintained by the Florida Department of Management Services within 36 months from the date of submittal of the bid or proposal.
3. *Decision.* After the Purchasing Agent has determined there is cause to suspend or debar an Offeror, the Offeror shall be given written notice of the debarment and the reasons for the action taken.

Sec. 2-253. Inspections and tests.

1. The director of the originating department may inspect, or arrange for the inspection of all deliveries of supplies, materials, equipment or contractual services to confirm that they meet the specifications set forth in the bid documents and contract.
2. Any originating department may inspect deliveries made to it.
3. The director of the originating department may require chemical and/or physical tests or samples submitted with bids and samples of deliveries which are deemed necessary to determine their quality and conformance with the specifications. For such tests, the Purchasing Agent 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 Offeror to pay the town for any expense incurred in testing.

Sec. 2-254. Equal opportunity/minority and women business enterprise.

1. The town shall use its best efforts to ensure that minority, women and veteran owned 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 be otherwise discriminated against in connection with the award and performance of any contracts with the town because of race, color, religion, national origin, age, sexual orientation, gender, marital status, handicap or physical impairment.

Sec. 2-255. Bid preferences.

- a. Except with regards to contracts to be reimbursed by the Federal Emergency Management Agency, the town shall provide in its Invitations to Bid, RFP, or RFQ, a five percent bid preference for:
 1. Local merchants whose principal office is within the town's boundaries, and who have maintained a valid town business tax receipt for the previous two entire calendar years; or
 2. Certified minority or Florida veteran owned business enterprises pursuant to the Florida Office of Supplier Diversity and to certified minority owned business as defined by § 288.703, F.S.

Sec. 2-256. Integrity in Public Contracting.

Recognizing that the preservation of the integrity of the public contracting and purchasing process is vital and is a matter of interest to all the people of the state, the Town has declared that the procedures for determining with whom it will transact business exists to secure for the public the benefits of free, fair and open compensation. The opportunity to bid on public entity contracts or to supply goods and services to public entities or to otherwise transact business with public entities is a privilege not a right. In order to preserve the integrity of the public contracting and purchasing process, the privilege of responding to a public solicitation by the Town shall be denied to those individuals or entities who have been directly or indirectly involved in the development of that RFP, ITB or other public solicitation.

Secs. 2-257. Town Logo Infringement.

Any facsimile or reproduction of the Town of Lake Park municipal logo as adopted by ordinance 11-2010 shall be manufactured, used, displayed or otherwise employed by anyone only for official Town business or upon the written approval of the Town Commission.

The manufacture, use, display, or other employment of any facsimile or reproduction of the Town of Lake Park official logo without written approval of the Town Commission is a second degree misdemeanor, punishable as provided in S. 775.082 or S. 775.083. The use of the Town of Lake Park logo on any response to a solicitation shall make such response subject to rejection.

Secs. 2-258--2-281. 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. 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 5. Effective Date. This Ordinance shall take effect immediately upon adoption.

CURRENT PURCHASING ORDINANCE

ORDINANCE NO. 09-2019

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, REPEALING IN ITS ENTIRETY CHAPTER 2, ARTICLE V, DIVISION 2, ENTITLED "PURCHASING", AND REPLACING AND READOPTING IT AS REVISED DIVISION 2; PROVIDING FOR SEVERABILITY; 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, it is necessary and appropriate for the Town to update and establish procedures and methods for procurement to be followed by the Town regarding its purchase goods and services; and

WHEREAS, the use of competitive procurement methods generally obtains the best price and maximize the value of public funds in procurements; and

WHEREAS, the procurement methods and procedures applied herein would provide a fair and equitable process for the treatment of persons and entities who seek to provide goods and/or services to the Town, and also would maintain quality and integrity in the administration of the procurement of goods and services; and

WHEREAS, the Town Manager has recommended to the Town Commission that it update Chapter 2, Article V, Division 2 pertaining to the procurement of goods and services.

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 legislative findings of the Town Commission.

Section 2. Chapter 2, Article V, Division 2, is hereby repealed in its entirety and is replaced with a new Division 2, as follows:

DIVISION 2. PURCHASING

Sec. 2-241. General purpose.

The purpose of this division is to promote efficient procedures for the purchase of goods and services; to provide for a fair and equitable process for businesses and persons who seek to provide goods or services to the Town; and to maximize the value of public funds. The procurement of goods and services shall be conducted by adhering to the highest standards of ethics, professionalism and impartiality.

Sec. 2-242. 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:

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

Bid: A formal written price offer by a Offeror to the town to furnish specific goods and/or services in response to an invitation to bid.

Bid award: A contract and/or purchase order to the selected Offeror to provide specific commodities and/or services to the town for which funds have been appropriated by the Commission.

Bid criteria: The basis upon which the town will rely to determine acceptability of a bid, as stated in the bid, 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.

Certificate of contract completion: A form which indicates that a project has been satisfactorily completed and the Offeror 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: 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 Offeror, 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.

Commodities: As defined in § 287.012(5), F.S.

Consultants Competitive Negotiation Act: As defined in § 287.055, F.S. and which is only applicable to the acquisition of architectural, engineering, landscape architectural or surveying and mapping services. Note: as defined therein this statute applies where the estimated cost of the professional services associated with planning or study activity exceeds \$35,000.00, or where the estimated project construction cost exceeds \$325,000.00.

Continuing contract: A "continuing contract" is as defined in F.S. Section 287.055(g).

Cooperative purchasing: A form of intergovernmental cooperative purchasing in which an entity will extend the price and terms of a contract entered into by a larger entity. Generally, a larger entity will competitively award a contract that will include language allowing for other entities to utilize the contract which may be to their advantage in terms of pricing, thereby gaining economies of scale that normally they would not receive if they competed on their own.

Debarment: The exclusion, for cause, of an Offeror from bidding and/or receiving a contract to do business with the town.

Design-build contract: The solicitation for design services and construction pursuant to which a single contract is entered into for a capital improvement construction project.

Designee: A duly authorized representative of a person, business organization, or governmental agency.

Estimate: A stated expectation of price based upon time, quantity or other qualifiers.

Evaluation committee: A committee comprised of town employees established for the purpose of evaluating bids and proposals submitted in response to requests for proposals for purchases with an estimated cost exceeding \$35,000.00.

Invitation to bid: The process to be used when the scope of work for a contractual service can be clearly defined or when specifications for the required goods can be precisely defined.

Minority business enterprise (certified): A business as defined by § 288.703 (1), F.S.

Minority person: A person as defined by § 288.703, F.S.

Notice to proceed: A written notification from the town to an Offeror to establish and authorize an Offeror to commence work under the provisions of the contract.

Offeror: A business or individual responding to an Invitation to Bid, Request for Qualifications, or Request for Proposals.

Originating department: The town department issuing an invitation to bid, request for proposals, statement or qualifications.

Palm Beach County Merchant: A merchant whose primary place of business is located within the boundaries of Palm Beach County, Florida, and who has had a valid Palm Beach County Local Business Tax Receipt and has been operating its business for at least one (1) year prior to the issuance of the invitation for bids or request for proposals.

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

Procurement: Buying, purchasing, renting, leasing or otherwise acquiring any commodities and/or services for public purposes in accordance with state or town law. 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 medical services: 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.

Project manager: A person designated by the Purchasing Agent to manage and to ensure compliance with contracts which he/she originates.

Proposal: An executed formal document submitted by an offeror 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: A violation as defined in § 287.133(1)(g), F.S..

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 Offerors which may, at a minimum, include:

- (i) Posting public notice on the town's website; and
- (ii) Notice in a newspaper of general circulation.

Purchasing agent: The town manager, or his designee.

Request for a Quote: An oral or written request for written pricing or services, or commodities.

Request for letters of interest: A formal process whereby the town solicits written proposals from a pool of Offerors to provide services who will be listed as qualified and eligible to submit responses to a request for proposals or an invitation to bid.

Request for proposal: A written or electronically posted solicitation for competitive sealed proposals.

Request for information: A written or electronically posted request made by an agency to Offerors for information concerning commodities or contractual services.

Responsible Offeror. An Offeror who is determined to have the qualifications, integrity, reliability and capability in all respects to fully perform in accordance with the requirements of an invitation to bid, request for proposals, qualifications, or statements.

Responsive bid, proposal, or reply. A bid, or proposal, or reply submitted by an offeror which conforms in all material respects to the solicitation.

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 qualifications. It may include a description of any requirement for inspecting, testing, or preparing a commodity, service, or construction item for delivery.

Surety: A form of bid security in the form of cash, certificate of deposit, cashier's check, or irrevocable letter of credit.

Suspension: The temporary debarment of an Offeror for up to three years.

Veteran business enterprise: Any business which meets the definition of § 295.187 (3), F.S. and which has been certified by the Florida Department of Management Services.

Sec. 2-243. Local Preference.

The town may give preference to proposals for goods and services received from Offerors whose business is located within the corporate limits of the town where price, quality and other relative factors offered by other Offerors are comparable.

Sec. 2-244. Exemptions.

This division shall not apply to:

1. The procurement of dues and memberships in trade or professional organizations; registration fees for trade and career fairs, subscriptions for periodicals and newspapers; advertisements; postage; legal and mediation services; professional medical services; services associated with the purchase or sale of real property; abstracts of title for real property; title searches and certificates; title insurance for real property; real estate appraisal services; water, sewer, telecommunications and electric utility services; copyrighted materials or patented materials including, but not limited to, technical pamphlets, published books, maps, testing or instructional materials; fees and costs of job-related seminars and training; admission fees for parks and entertainment activities included in Town recreational programs;
2. Agreements between the town and other government or nonprofit organizations that provide for the transfer, sale, or exchange of goods and services.
3. Goods purchased with petty cash or town procurement cards in accordance with the town's petty cash and procurement card procedures;
4. Items purchased for resale to the general public; for example supplies for a Town-owned concession area.
5. Purchase of food items;
6. Artistic services or works of art;

7. Travel expenses, hotel accommodations and hotel services;
8. Entertainment or entertainment-related services for town sponsored events;
9. Purchase of motor vehicle license plates from a governmental agency;
10. Persons or entities retained as "expert witnesses" pertaining to anticipated, threatened or actual litigation;
11. Educational or academic programs;
12. Recreational instructors and sports officials;
13. Proprietary software applications; and
14. Full or part-time contractual employees or independent contractors; and
15. Any services identified in §287.05, F.S. as may be amended from time to time as being exempt from competitive bid/request for proposal requirements;

Provided, however, that these exemptions shall not preclude the town from procuring such goods and/or services using the procedures listed in this article.

Sec. 2-245. Organization.

Except as otherwise provided herein, the Purchasing Agent or his designee as the town's Purchasing Agent shall be ultimately responsible for the procurement of all goods and services.

The Purchasing Agent shall:

1. Administer the purchasing functions of the town.
2. Implement the policies and procedures for the procurement of goods and services established in this division and applicable state law.
3. Purchase or contract for goods and services in accordance with provisions of this division.
4. Ensure that funds have been budgeted and appropriated prior to the execution of contracts or issuance of purchase orders for the procurement of goods and services.

Sec. 2-246. Thresholds for the procurement of goods and services.

The town commission hereby establishes \$35,000 as the threshold at which a formal competitive solicitation process shall be used, unless as otherwise provided for herein. A formal

competitive solicitation process shall be employed for all invitations to bid, request for proposals, request for qualifications, or request for information. When employing these formal competitive solicitations, the invitation or request shall be published such that it is available simultaneously to all Offerors and shall include the time and date for the town's receipt of bids, proposals, and replies. All formal competitive solicitations shall include provisions relating to compliance with the regulations of the Palm Beach County Office of Inspector General.

1. For goods and services with a value greater than \$10,000, but less than \$35,000, the town manager or designee shall electronically post on the town's website a description of the goods and services being sought for at least seven (7) consecutive business days. The posted information shall include the scope of work, specifications for goods and the response forms to be used by Offerors in response to the request for quotation (RFQ).
2. For goods and services with a value between \$1,501 and \$4,999, the town shall solicit at least three (3) verbal quotes.
3. For goods and services with a value between \$5,000 and \$9,999 at least three (3) written quotes shall be solicited.
4. For the purchase of goods and services of less than \$2,500, the originating department may use a field purchase order (FPO). It is the responsibility of the originating 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 originating 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 \$2,500.00.
5. Purchase orders or contracts for goods or services with a value less than \$7,500 must be approved by a department director and the Purchasing Agent.
6. In lieu of using blanket written purchase orders for small dollar value purchases of less than \$1,000.00, departments are authorized to use electronic purchasing media, including bank issued purchasing cards (credit cards). The Purchasing Agent or designee shall establish policies and procedures to ensure adequate internal controls for the use of the cards.

Sec. 2-247. Competitive sealed solicitation process.

(a) Unless otherwise provided herein, goods and services with a value of less than the threshold established in section 2-246 shall be procured through an informal competitive solicitation process to the extent practicable by soliciting quotes, or by using the alternative source selection methods specified in section 2-249.

1. Invitation to Bid: The bid process shall be used when the scope of

work for a contractual service can be clearly defined or when specifications for the required goods can be precisely defined.

2. Request for Proposals (RFP): A RFP shall be used when the purposes and uses for which the goods, group of goods, or contractual services can be defined and various combinations or versions of the goods and contractual services may be proposed by an Offeror to meet the specifications of the solicitation document.
3. A RFP shall include terms and conditions, the scope of work, evaluation criteria and relative importance of price and other evaluation criteria, and whether an awarded contract is eligible to be renewed.
4. A contract may be awarded to the responsible and responsive proposer whose proposal is determined to be the most advantageous to the town, taking into consideration the price and other evaluation criteria set forth in a RFP.

(b) Services Governed by the Consultants' Competitive Negotiation Act

The procurement of professional architectural, engineering, landscape architectural, or surveying and mapping services shall be conducted in accordance with the requirements of §287.055, F.S., entitled the "Consultants' Competitive Negotiation Act."

(c) Other Professional Services

The procurement of professional services not governed by the Consultants Competitive Negotiations Act shall be solicited in accordance with the Invitation to Bid, RFP or RFQ.

(d) The competitive sealed proposal solicitation process shall provide for:

1. Public notice. Public notice of an invitation to bid, RFP or RFQ shall be given in the same manner as provided for competitive sealed bidding except all Invitations to Bid, RFPs or RFQs. The public notice shall allow at least 30 days for the submission of proposals unless the Purchasing Agent or designee determines that a notice of less than 30 days is in the best interests of the town. The public notice shall state the place, date and time where proposals are required to be submitted, and of the opening of proposals.
2. Submission. Proposals shall be submitted to the town no later than the specified time and date and at the location specified in the Invitation to Bid, RFP or RFQ. No proposal shall be accepted after such time, or at any other location than specified; any proposal received after the specified time and date, or to any location other than the location specified in the notice shall be returned unopened.
3. Proposal cancellation or postponement. The Purchasing Agent or designee may, prior to the due date of the RFP or RFQ, elect to extend, cancel or postpone the date and/or time for the submission of a RFP or RFQ. In such situations an addendum, or a notice of cancellation shall be issued.

(e) Cone of Silence.

An offeror shall not communicate with any elected or appointed town official or employee other than a person listed in the document soliciting bids or proposals prior to the time an award has been made by the town commission. Any communication between the offeror and the town shall be submitted to the office of the town clerk, or of the official referenced in an Invitation to Bid, RFP or RFQ. Any violation of the Cone of Silence imposed herein shall be grounds for the disqualification of an offeror.

(f) Proposal evaluation.

Proposals may be evaluated by an evaluation committee, which shall have not less than three voting members and shall be composed as follows: the originating department director who in conjunction with the Purchasing Agent appoints the chair and other members of the committee.

An 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 Invitation to Bid, RFP, or RFQ. The evaluation of proposals shall be in accordance with the procedure established in an Invitation to Bid, RFP or RFQ.

(g) Award. Notice of the intent to award, along with a tabulation of the results of an evaluation, shall be posted by the town clerk on the town's website at least five business days prior to the commission's consideration of an award. The town clerk shall also provide all offerors affected by the proposed award written notice of the intent to award by email at the same time as the notice of intent to award is posted on the town's website.

(h) Continuing services contracts:

1. If there are two or more consultants which have been retained pursuant to a continuing services contract, the Purchasing Agent and department director of the originating department shall determine which firm is the most qualified to provide the required services.
2. The town may select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the town shall consider such factors as the ability of professional personnel; past performance; willingness to meet time and budget requirements; location; and, recent, current, and projected workloads of the firms.

Sec. 2-248. Responses to competitive solicitations.

General solicitations:

1. A response to a competitive solicitation shall be submitted to the town clerk in a sealed envelope no later than the time and date at the location specified in the solicitation. Any response received after the deadline established in the solicitation, or which is submitted at a location other than at the location specified

in the solicitation shall be deemed unresponsive and shall be returned unopened to the offeror. It shall be the offeror's sole responsibility to ensure that its response reaches the specified place for receipt of responses to solicitations and by the time specified in the solicitation document. The town shall bear no responsibility for any failure of the U.S. Postal Service, other courier service or a town employee to successfully deliver a response, or for a mistake in the delivery of a response to a location other than the location designated in the solicitation.

2. Responses to the solicitations shall be accepted from all qualified offerors except as otherwise provided herein and shall be evaluated based on the requirements set forth in the solicitation.
3. The town may, at any time and in its sole discretion, reject all responses to solicitations and may or may not choose to seek solicitations in the future.
4. Responses to solicitations shall be opened publicly in the presence of one or more witnesses at the time and place specified in the solicitation. The town clerk or the clerk's designee shall officiate at the opening of competitive solicitations, and shall announce and record the name of each offeror, if appropriate, recite the amount of each offeror's response and such other information related to the solicitations as is appropriate.
5. All responses to solicitations shall become public records and shall be subject to public disclosure once opened.
6. An offeror may withdraw a response to a solicitation prior to date and time designated in the solicitation for their opening. If an offeror withdraws its response after the deadline established of a competitive solicitation, the purchasing agent may suspend an offeror from participating in any future town solicitations for up to three years.

7. Construction project solicitations:

The procurement of contractors for the town's construction projects shall follow the competitive sealed bid process outlined in § 2-247.

1. Bid security shall be required for all competitive sealed bidding for town construction projects where the cost of construction is estimated to exceed \$ \$100,000.00 in the form of a bid bond executed by a surety company authorized to do business in the State of Florida. Alternatively, cash in the form of a certificate of deposit, cashier's check, or irrevocable letter of credit, may be tendered in lieu of the bid bond. The Purchasing Agent may require bid security for construction contracts of less than \$100,000.00 as determined in the discretion of the Purchasing Agent. The amount of the bid security shall be in an amount deemed sufficient by the Purchasing Agent to ensure bid compliance but in no event shall the bid security be less than five percent of the bid amount.

2. Any person, firm or entity that enters into a written construction contract exceeding \$100,000.00 shall execute and deliver to the town, prior to, or concurrent with, the execution of the contract, a performance bond, in an amount equal to or greater than 100 percent of the contract price, . The bonds shall be issued by a surety insurer authorized to do business in the State of Florida as a surety. At the discretion of the Purchasing Agent, any person or entity entering into a construction contract which is for \$100,000.00 or less may be exempted from executing the payment and performance bond.
3. The surety must state on its front page: the name, principal business address, and phone number of the Offeror, 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 surety shall be conditioned upon the Offeror'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.
4. If at any time after the execution of the contract and the surety, the town deems the surety or sureties upon such surety to be unsatisfactory or, if for any reason such surety cease to be adequate to cover the requirements of the contract, the town may require the Offeror, at its sole expense and within five days after the receipt of notice from the town, to furnish an additional surety in such form and amount and with such surety as shall be satisfactory to the town. In such event, no further payment to the Offeror 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.
5. Nothing herein is intended to prohibit the acceptance of a voluntary reduction in price from the top ranked offeror after recommendation to award bid to that offeror, provided such reduction is not conditioned on, or does not result in, the modification or deletion of any specifications or conditions contained in the offeror's response to the solicitation.

Sec. 2-249. Alternative Source Selection:

1. Cooperative purchases: Purchases utilizing contracts of other entities: Notwithstanding any requirements of this division, the purchase of goods and services under a contract with a federal, state or municipal government or any other governmental agency, political subdivision, or government-related association for the same scope of services may be made providing that the originating entity utilized a competitive process substantially similar to that used by the Town.

2. Emergency Purchase: The Purchasing Agent may authorize an emergency purchase when a declaration of emergency has been issued or there is a threat of other substantial or potential loss to the Town that requires urgent action.
3. Sole and Single Source Purchases: The Purchasing Agent may make or authorize the purchase of goods and services without competitive solicitation when the director of the department requesting the purchase has documented in writing and provided information supporting the fact that the goods or service requested is the only item that meets the specified requirements and the goods or service is only available through one (1) source.

Sec. 2-250. Contract document.

a. Contracts:

1. The procurement of goods or services shall be evidenced by a written contract or purchase order.
2. Contracts may be renewed or extended for a period not exceeding three (3) years, during the term, or upon the expiration of the term of the original contract.
3. Contract administration shall be the responsibility of the originating department with oversight by the Purchasing Agent.
4. Contract change orders shall be authorized in writing subject to Chapter 2, Article III, Section 2-82 setting forth the purchasing authority of the Purchasing Agent provided that the change does not materially alter the character of the work contemplated by the contract and sufficient budgeted funds are available.

Sec. 2-251. Protested solicitations and awards.

1. Right to protest. Any actual or prospective offeror that is aggrieved in connection with a pending award of a contract may protest to the town's Purchasing Agent in accordance with the following procedures.

The formal written protest must then be filed at the office of the Purchasing Agent no later than 5:00 p.m. Eastern Standard Time, within five business days after the date of Posting of the Notice of Intent to Award. The formal written protest shall contain at a minimum the following information:

- i. Identification of the name, address and contact information of the protestant and the solicitation involved;

- ii. A brief, statement of the facts and the legal basis for the protest;
 - iii. Identification of any applicable statutes, or ordinance(s), or other legal authority(ies) which the protestant deems applicable;
 - iv. A written statement indicating the specific nature of the relief requested by protestant; and
 - v. Any written or physical materials, or objects which the protestant deems relevant to the protest.
- c. The formal written protest is considered timely filed upon its receipt by the Purchasing Agent within the time frame set forth herein. Failure to timely file a protest within the time specified herein shall result in relinquishment of all rights to protest an anticipated award.
- d. Offerors shall not attempt to influence, persuade or promote communicating with any town elected or appointed official, or employee regarding the merits of their protest other than as set forth herein. Any attempt to do so shall be cause for suspension of the right to respond to the town's solicitation of goods or services in accordance with subsection 2-252(a).
3. Authority to resolve. The Purchasing Agent shall convene the protest committee, which shall consist of the Purchasing Agent, department director of the originating department, and a third department director which shall render its decision. The protestant may appeal this decision by sending a written notice to the Purchasing Agent within five business days of the protest committee's written decision.
4. Proceedings. The protest committee shall meet in a public meeting. The town clerk shall give reasonable notice to all substantially affected offerors prior to the date scheduled to consider the appeal of the protest. Although it is a public meeting, the only individuals permitted to address the protest committee are those offerors who constitute the Protestant.
- a. At least five business days prior to the protest committee's proceeding, the protestant may submit any written or physical materials, objects, statements, affidavits, and arguments which the protestant deems relevant to the protest. In the proceeding, the protestant or its representatives may make an oral presentation pertaining to the protest. The members of the protest committee may make whatever inquiries of the deemed pertinent to assist them in their determination of the appeal of the finance director's decision.
5. Stay of procurement during protests. In the event of a timely protest, an award shall be postponed until the protest committee has rendered its written decision of the appeal.

Sec. 2-252. Suspension and debarment.

1. *Suspension.* An offeror may be suspended from submitting Invitations to Bid, RFPs or RFQs for five years from the date of the issuance of the procurement document and after all appeals have been exhausted for the following reasons:

- a. Offeror fails to fully comply with the conditions, specifications, or terms of a contract which has been awarded to the Offeror by the town;
- b. Offeror commits any fraud or provides false information in connection with a bid, quotation, proposal or contract with the town;
- c. Offeror is charged with the following crimes: 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. If charges are dismissed or the offeror is found not guilty, the suspension shall be lifted automatically upon written notification and proof of final court disposition provided by the offeror to town;
- e. Offeror becomes insolvent, as evidenced by proceedings in bankruptcy;
- f. Offeror violates the ethical standards set forth in local, state, or federal law;

2. *Debarment.* An offeror may be permanently debarred for the following reasons:

- a. 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.
- b. Placement of the offeror on the convicted vendor list maintained by the Florida Department of Management Services within 36 months from the date of submittal of the bid or proposal.
- c. *Decision.* After the Purchasing Agent has determined there is cause to suspend or debar an offeror, the offeror shall be given written notice of the debarment and the reasons for the action taken.

Sec. 2-253. Inspections and tests.

- 1. The director of the originating department may inspect, or arrange for the inspection of all deliveries of supplies, materials, equipment or contractual services to confirm that they meet the specifications set forth in the bid documents and contract.
- 2. Any originating department may inspect deliveries made to it.
- 3. The director of the originating department may require chemical and/or physical tests or samples submitted with bids and samples of deliveries which are deemed

necessary to determine their quality and conformance with the specifications. For such tests, the Purchasing Agent 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 offeror to pay the town for any expense incurred in testing.

Sec. 2-254. Equal opportunity/minority and women business enterprise.

1. The town shall use its best efforts to ensure that minority, women and veteran owned 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 be otherwise discriminated against in connection with the award and performance of any contracts with the town because of race, color, religion, national origin, age, sexual orientation, gender, marital status, handicap or physical impairment.

Sec. 2-255. Bid preferences.

Except with regards to contracts to be reimbursed by the Federal Emergency Management Agency, the town shall provide in its Invitations to Bid, RFP, or RFQ, a five percent bid preference for:

1. Local merchants whose principal office is within the town's boundaries, and who have maintained a valid town business tax receipt for the previous two entire calendar years; or
2. Certified minority or Florida veteran owned business enterprises pursuant to the Florida Office of Supplier Diversity and to certified minority owned business as defined by § 288.703, F.S..

Secs. 2-256--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. 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 5. Effective Date. This Ordinance shall take effect immediately upon adoption.

Upon First Reading this 30 day of October, 2019, the foregoing Ordinance was offered by Commissioner Flaherty, who moved its approval. The motion was seconded by Commissioner Michaud and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u>/</u>	<u> </u>
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	<u> </u>
COMMISSIONER ERIN FLAHERTY	<u>/</u>	<u> </u>
COMMISSIONER JOHN LINDEN	<u> </u>	<u>/</u>
COMMISSIONER ROGER MICHAUD	<u>/</u>	<u> </u>

PUBLISHED IN THE PALM BEACH POST THIS 3 DAY OF November, 2019

Upon Second Reading this 20 day of November, 2019, the foregoing Ordinance, was offered by Commissioner Flaherty, who moved its adoption. The motion was seconded by Vice-Mayor Glas-Castro and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR MICHAEL O'ROURKE	<u>/</u>	<u> </u>
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u>/</u>	<u> </u>
COMMISSIONER ERIN FLAHERTY	<u>/</u>	<u> </u>
COMMISSIONER JOHN LINDEN	<u> </u>	<u> </u>
COMMISSIONER ROGER MICHAUD	<u>/</u>	<u> </u>

The Mayor thereupon declared Ordinance No. 09-2019 duly passed and adopted this 20 day of November, 2019.


TOWN OF LAKE PARK, FLORIDA

BY: 
Mayor, Michael O'Rourke

ATTEST:

Approved as to form and legal sufficiency:


Town Clerk, Vivian Mendez


Town Attorney, Thomas J. Baird

