

ORDINANCE 2011-32

AN ORDINANCE AMENDING CHAPTER 2, ADMINISTRATION, LAKE WALES CODE OF ORDINANCES, AMENDING RULES AND PROCEDURES FOR THE PROCUREMENT OF PROPERTY AND SERVICES ESTABLISHING PROCEDURES CONFORMING TO FLORIDA STATUTES FOR DIRECT PURCHASE OF MATERIALS TO AVOID SALES TAX. PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED, by the City Commission of the City of Lake Wales, Polk County, Florida,

SECTION 1. Chapter 2, Administration, Lake Wales Code of Ordinances is hereby amended to read as follows:

Art. IV. Procurement of Property and Services.

- Div. 1. General Matters. §§ 2-400 -- 2-415.
- Div. 2. Procurement of Commodities and Contractual Services. §§ 2-416 -- 2-422.
- Div. 3. Procurement of Professional Services. §§ 2-423 -- 2-440.
- Div. 4. Procurement of Design-Build Services. §§ 2-441 -- 2-454.
- Div. 5. Procurement of Construction Services. §§ 2-455 -- 2-464.
- Div. 6. Procurement of Real Property. §§ 2-465 -- 2-470.
- Div. 7. Maintenance of Records and Inventory. §§ 2-471 -- 2-475.
- Div. 8. General Administrative Provisions. §§ 2-480 -- 2-485.
- Reserved. §§ 2-486 -- 2-499.

ARTICLE IV. PROCUREMENT OF PROPERTY AND SERVICES.

DIVISION 1. GENERAL MATTERS.

Sec. 2-400. Legislative intent.

(a) The City Commission recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation and monitoring of the procurement process are important means of curbing any improprieties and establishing public confidence in the process by which property and services are procured.

(b) The City Commission recognizes it is essential to the effective and ethical procurement of property and services that there be a system of uniform procedures to be utilized by city agencies in procuring property and services; that detailed documentation of procurement decisions be maintained; and that adherence by the city and the contractor to specific ethical considerations be required.

(c) The City Commission recognizes it is essential that city procurement procedures comply with state statutes where required; and that city procurement procedures be consistent with the intent of state statutes where strict compliance is not required.

Sec. 2-401. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section:

Agency. Any of the various departments, divisions, boards, or commissions of the City of Lake Wales when procuring commodities or services on behalf of the city and in payment of which public funds will be obligated or expended. The term "agency" does not

extend to a nongovernmental developer that contributes public facilities to a political subdivision.

Agency official. Any elected or appointed officeholder, employee, consultant or any other person receiving compensation from the city.

Commodity. Any of the various supplies, materials, goods, merchandise, equipment, and other tangible personal property purchased, leased, or otherwise contracted for by city agencies. The term "*commodity*" includes computer hardware and software; the term also includes interest on deferred-payment commodity contracts entered into for the purchase of other commodities. While not a commodity, the procedures for the purchase of insurance shall be the same as those set forth herein for the purchase of commodities.

Competitive sealed bids or competitive sealed proposals. The receipt of two or more sealed bids or proposals submitted by responsive and qualified bidders or offerors.

Contractor. A person who contracts to sell commodities or contractual services to an agency.

Contractual service. The rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term "*contractual service*" does not include contracts for professional services entered into pursuant to division 3 of this article and rules adopted thereunder.

Convicted vendor list. The list maintained by the State of Florida Department of Management Services indicating the names and addresses of persons who have been disqualified from the public contracting and purchasing process as a result of a finding of guilt or a conviction of a public entity crime.

Exceptional purchase. Any purchase of commodities or contractual services excepted by law or by rule from the requirements for competitive solicitation or acquisition, including, but not limited to, purchases from a single source, purchases due to emergency circumstances and purchases upon receipt of less than two responsive bids or proposals.

Extension. An increase in the time allowed for the contract period due to circumstances which, without fault of either party, make performance impracticable or impossible or which prevent a new contract from being executed.

F.S. A reference to Florida Statutes.

Informal bidding. Verbal or non-sealed, written price quotations obtained in relation to the procurement of commodities or services.

Informal competitive selection. A process used under exceptional circumstances when the scope or specificity of a project in combination with conditions in the construction market make it difficult or impossible to obtain a fair and reasonable price for a construction project through the competitive sealed bidding process. As part of this process, contractors will be individually invited to examine the project site with city staff, provide input and options for accomplishing the project goals in the most cost-effective manner through value-engineering, choice of materials, etc., and submit informal proposals with price quotes for the work to be done.

Invitation to bid. A written solicitation for competitive sealed bids with the title, date and hour of the public bid opening designated and specifically defining the commodity, group of commodities or services for which bids are sought. It includes instructions prescribing all conditions for bidding and shall be distributed to all prospective bidders simultaneously. The "*invitation to bid*" is used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.

Local vendor. Any person who, or place of business which, provides or proposes to provide a commodity or contractual service when such person or business has a principal place of business located within the City of Lake Wales or a principal place of business located outside the city limits and having a Lake Wales mailing address provided such mailing address is not a post office box. The utilization of a post office box for mail delivery shall not disqualify a local vendor, so long as the vendor can demonstrate that the physical address of the vendors principal place of business is located at a Lake Wales mailing address if the vendor allowed mail delivery at its physical address.

Minority business enterprise. Any independently owned and operated business concern that employs 5 or fewer permanent full-time employees and that has a net worth of not more than \$1 million which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least 51 percent owned by minority persons and whose management and daily operations are controlled by such persons. A minority business enterprise may primarily involve the practice of a profession.

Person. Any natural person or any entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "*person*" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.

Public entity. The State of Florida, any of its departments or agencies, or any political subdivision.

Public entity crime. A violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods and services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

Qualified bidder, responsible bidder, qualified offeror or responsible offeror. An individual or business enterprise having the capability in all respects to perform fully the contract requirements and having the integrity and reliability which will assure good faith performance.

Renewal. Contracting with the same contractor for an additional contract period after the initial contract period, only if pursuant to contract terms specifically providing for such renewal.

Request for proposals. A written solicitation for competitive sealed proposals with the title, date and hour of the public opening designated. The request for proposals is used when the agency is incapable of specifically defining the scope of work for which the commodity, group of commodities or contractual service is required and when the agency is requesting that a qualified offeror propose a commodity, group of commodities or contractual service to meet the specifications of the solicitation document. A "*request for proposals*" includes, but is not limited to, general information, applicable laws and rules, functional or general specifications, statement of work, proposal instructions and the relative importance of price and any other evaluation criteria.

Responsive bid or responsive proposal. A bid or proposal submitted by a responsive and qualified bidder or offeror which conforms in all material respects to the invitation to bid or request for proposals.

Responsive bidder or responsive offeror. A party submitting a bid or proposal which conforms in all material respects to the invitation to bid or request for proposals.

Term contract. An indefinite quantity contract wherein a party agrees to furnish commodities or contractual services during a prescribed period of time, the expiration of which concludes the contract.

Sec. 2-402. Purchasing categories and threshold amounts.

(a) The city hereby adopts the purchasing categories established by Chapter 287, F.S., as follows:

CATEGORY ONE:	\$15,000
CATEGORY TWO:	\$25,000
CATEGORY THREE:	\$50,000
CATEGORY FOUR:	\$150,000
CATEGORY FIVE:	\$250,000

(b) Wherever it is determined that lower threshold amounts are advisable for requirement of certain procedures in the procurement of particular goods or services, the city has the discretion to make such requirements as are deemed to be in the public interest.

Sec. 2-403. Procurement under the provisions of the state purchasing contracts.

(a) Pursuant to Chapter 287, F.S., the State of Florida Division of Purchasing of the Department of Management Services plans and coordinates purchases in volume and negotiates and executes purchasing agreements and contracts for commodities and contractual services under which municipalities may make purchases.

(b) Purchases by city agencies under the provisions in the state purchasing contracts are exempt from the competitive sealed bid requirements otherwise applying to purchases.

Sec. 2-404. Procurement under contracts bid by other agencies.

a) In order to procure commodities and contractual services at the most economically advantageous cost to the public, it is sometimes desirable to "piggy back" or consolidate the purchasing power of the city with that of other agencies in the state.

(b) Purchases by city agencies under contracts competitively bid by any county, municipality, school board, school district or other agency or entity constituted for governmental purposes in the state are exempt from the competitive sealed bid requirements otherwise applying to purchases. Documentation of such competitive bidding by other agencies or entities shall be included in the official records of the city.

Sec. 2-405. Acquisition of tangible personal property.

Whenever acquiring tangible personal property of a non-consumable nature, the city may pay the purchase price in full or may exchange city-owned property with the seller as a trade-in and apply the exchange allowance to the cost of the new property acquired.

Sec. 2-406. Contract document.

(a) No agreement or contract shall be executed which binds the city for the purchase of services or commodities for a period in excess of 1 fiscal year, unless the following statement is included in the contract: "The performance of the City of Lake Wales and its obligation to pay under this contract is contingent upon annual appropriation by the City Commission of Lake Wales."

(b) In accordance with the requirements of section 287.058, F.S., every procurement of services in excess of the threshold amount for CATEGORY ONE-(\$15,000) shall be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services, which provisions and conditions shall, where applicable, include, but shall

not be limited to:

- (1) A provision that bills or fees or other compensation for services or expenses be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- (2) A provision that bills for any travel expenses be submitted in accordance with section 112.061, F.S., and that reimbursements for said expenses not exceed the limits specified in section 112.061, F.S.
- (3) A provision allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, F.S., and made or received by the contractor in conjunction with contract.
- (4) A provision dividing the contract into units of deliverables, which shall include, but not be limited to, reports, findings and drafts that must be received and accepted in writing by the contract manager prior to payment.
- (5) A provision specifying the criteria and the final date by which such criteria must be met for completion of the contract.
- (6) If the contract is subject to renewal, a provision specifying that the contract may be renewed on a yearly basis for a period of up to two (2) years after the initial contract or for a period no longer than the term of the original contract, whichever is longer, specifying the terms under which the cost may change as determined in the invitation to bid or request for proposals, and specifying that renewals shall be contingent upon satisfactory performance evaluations by the city and subject to the availability of funds.

(c) The written agreement shall be signed by the city manager and the contractor prior to the rendering of any service the value of which is in excess of the threshold amount for CATEGORY ONE (\$15,000), except in the case of a valid emergency as certified by the city manager.

(d) Every procurement of services which do not exceed the threshold amount for CATEGORY ONE (\$15,000) shall be evidenced by documentation in accordance with the requirements of section 2-417(c) of this ordinance.

Sec. 2-407. Public entity crime.

(a) As used in this section, "affiliate" means:

- (1) A predecessor or successor of a person convicted of a public entity crime; or
- (2) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime including, but not limited to, those officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of an affiliate.

(b) In accordance with section 287.133, F.S., the city shall not accept any bid from, award any contract to, or transact any business in excess of the threshold amount for CATEGORY TWO (\$25,000) with any person or affiliate on the convicted vendor list for a period of 36 months from the date that person or affiliate was placed on the convicted vendor list unless that person or affiliate has been removed from the list pursuant to section 287.133(3)(f), F.S.

(c) Prior to entering into a contract with the city for the provision of goods or services, the lease of real property, or the construction or repair of a public building or public work in excess of the threshold amount for CATEGORY TWO (\$25,000), a person shall file a sworn statement with the city disclosing whether or not the person or an affiliate of that person has been convicted of a public entity crime. Such statement shall be filed for the

calendar year and shall be filed on a form provided by the city.

(d) Agencies shall confirm that a person or affiliate is not on the convicted vendor's list prior to the award of any contract or transaction of any business in excess of the threshold amount for CATEGORY TWO (\$25,000). The convicted vendor list is published quarterly in the *Florida Administrative Weekly* by the State of Florida Department of Management Services.

Secs. 2-408 -- 2-415. Reserved.

DIVISION 2. PROCUREMENT OF COMMODITIES OR CONTRACTUAL SERVICES.

Sec. 2-416. Applicability.

All commodities and contractual services as defined in section 2-401 shall be procured in accordance with the provisions of this division.

Sec. 2-417. Commodities or contractual services not exceeding the threshold amount for CATEGORY TWO (\$25,000).

(a) *Informal bidding.* Informal competitive bidding will be required for the purchase of commodities and contractual services when the cost exceeds \$500.00. A minimum of three bids will be required as follows:

- (1) Verbal bids may be accepted for commodities or services which do not exceed \$2,500.00.
- (2) Written bids will be required for purchases in excess of \$2,500.00.

(b) *Award of bid.* Awards shall be made to the qualified bidder with the lowest responsive bid. Preference shall be given to a local vendor when the bid is not more than two percent (2%) higher than the low bid.

(c) *Documentation.* All purchases will be documented and authorized on standard forms or vouchers provided by the finance department, and the issuance of a purchase order will be required prior to the purchase of commodities when cost exceeds \$500.00 or when cost does not exceed \$500.00 at the discretion of the city manager.

(d) *Authorization.* Authorization for a purchase will be obtained prior to making the purchase as follows:

- (1) Department heads or their designees may authorize purchases which do not exceed \$500.00. For administrative purposes the city manager may, at his discretion, establish the limit for department head purchase authorization at an amount less than \$500.00.
- (2) The city manager or his designee must authorize all purchases which exceed \$500.00 before the purchase is made. For administrative purposes the city manager may, at his discretion, establish the requirement for prior authorization by the city manager at an amount less than \$500.00.
- (3) The city commission must authorize all purchases which cost \$10,000.00 or more and all purchases made from unbudgeted fund balances.

(e) *Exceptional purchases.* When the purchase price of commodities or contractual services does not exceed the threshold amount for CATEGORY TWO (\$25,000), purchases may be excepted from the requirement of informal competitive bidding if the following

conditions exist:

- (1) *Emergency conditions.* Purchases may be excepted from informal competitive bidding if the city manager determines that an immediate danger to the public health, safety or welfare or other substantial loss to the public requires emergency action.
 - a. emergency procurement shall be made with such competition as is practicable under the circumstances
 - b. a statement explaining the need for emergency procurement shall be furnished to the finance director with the voucher authorizing payment
- (2) *Single source.* Commodities or contractual services available only from a single source may be excepted from the bid requirements if it is determined that such commodities and services are available only from a single source and such determination is documented in writing.
 - a. no sole source purchase shall be made without the prior authorization of the city manager
 - b. a copy of the written determination of single source availability shall be furnished to the finance director with the voucher authorizing payment
- (3) *Consolidated purchasing.* In accordance with section 2-403 or section 2-404, procurement of commodities and contractual services may be excepted from the informal competitive bid requirements of this section if the city is "piggy-backing" or consolidating its procurement with that of another agency or entity constituted for governmental purposes; provided that the commodities or contractual services to be procured have been subjected to competitive bidding by said other agency or entity and documentation of such competitive bidding is included in the official records of the city.
- (f) *Encumbrance.* No purchase shall be made until sufficient funds are encumbered by the finance department. The finance department shall not process an encumbrance when the remaining balance of budgeted funds in the applicable expenditure account is insufficient to make the purchase.
- (g) *Administrative procedures.* All agencies making purchases will comply with administrative procedures developed by the finance department.
- (h) *Review of contract.* Each contract for contractual services costing more than the threshold amount for CATEGORY ONE (\$15,000) shall be executed in a form of agreement provided by the city or shall receive legal review and approval as to content before the contract is executed. No contract shall be approved which does not include the minimum provisions required by section 2-406.
- (i) *Record retention.* The original copy of each executed contract shall be forwarded to the city clerk for addition to the official records of the city and retention in accordance with the requirements of section 2-481.

Sec. 2-418. Commodities or contractual services in excess of the threshold amount for CATEGORY TWO (\$25,000).

(a) *Competitive sealed bidding.* Unless otherwise authorized by this article, all contracts for purchasing commodities or contractual services when the cost exceeds the threshold amount for CATEGORY TWO (\$25,000) shall be awarded by competitive sealed bidding.

- (1) An invitation to bid shall be issued which shall include:

- a. a detailed description of the commodities or contractual services required
 - b. the date, time and place for submittal of bids
 - c. all contractual terms and conditions applicable to the procurement of commodities or contractual services
 - d. the criteria to be used in determining acceptability of the bid which shall include, but need not be limited to, price
 - (2) The invitation to bid shall be advertised by the publication of a notice in the legal section of a newspaper of general circulation in the county at least once, or by posting three notices in three conspicuous places in the city, one of which shall be the public notices board in city hall. A minimum of 15 days shall elapse between the date of publication or posting of such notice and the date of receiving bids. In addition, an invitation to bid may be mailed to any known prospective bidders.
 - (3) If the renewal of the contract is contemplated, it shall be so stated in the invitation to bid, and the bid shall include the price for each year for which the contract may be renewed. Evaluation of bids shall include consideration of the total cost for each year as quoted by the bidder.
 - (4) No criteria may be used in determining acceptability of the bid that were not set forth in the invitation to bid.
 - (5) All bid proposals, disclosures, bonds and affidavits shall be submitted on forms provided by the city.
 - (6) The contract shall be awarded with reasonable promptness by written notice to the qualified and responsive bidder who submits the lowest responsive bid after the city manager obtains the formal approval of the city commission for the bid award. This bid must be determined in writing to meet the requirements and criteria set forth in the invitation to bid. Preference shall be given to a local vendor when the bid is not more than two percent (2%) higher than the low bid.
- (b) *Competitive sealed proposals.* When the city manager determines that the use of competitive sealed bidding is not practicable, commodities or contractual services shall be procured by competitive sealed proposals.

- (1) A request for proposals shall be issued which shall include:
 - a. a detailed description of the commodities or contractual services required
 - b. the date, time and place for submittal of proposals
 - c. all contractual terms and conditions applicable to the procurement of commodities or contractual services
 - d. the criteria to be used in determining acceptability of the proposal which shall include, but need not be limited to, price
- (2) The request for proposals shall be advertised by the publication of a notice in the legal section of a newspaper of general circulation in the county at least once. A minimum of 15 days shall elapse between the date of publication of such notice and the date of receiving bids. In addition, a request for proposals may be mailed to any known prospective offerors.
- (3) If the renewal of the contract is contemplated, it shall be so stated in the request for proposals, and the proposal shall include the price for each year for which the contract may be renewed. Evaluation of proposals shall include consideration of the total cost for each year as quoted by the offeror.

- (4) To ensure full understanding of and responsiveness to the solicitation requirements, discussions may be conducted with qualified offerors. The offerors shall be accorded fair and equal treatment prior to the submittal date specified in the request for proposals.
- (5) All bid proposals, disclosures, bonds and affidavits shall be submitted on forms provided by the city.
- (6) The contract shall be awarded, after obtaining approval of the city commission, to the qualified and responsive offeror whose proposal is determined in writing to be the most advantageous to the city, taking into consideration the price and the other criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

(c) *Exceptional purchases.* When the purchase price of commodities or contractual services exceeds the threshold amount for CATEGORY TWO (\$25,000), purchases may be excepted from the requirement of competitive sealed bids or competitive sealed proposals if the following conditions exist:

- (1) *Emergency conditions.* Purchases may be excepted from competition if the city manager determines that an immediate danger to the public health, safety or welfare or other substantial loss to the public requires emergency action.
 - a. emergency procurement shall be made with such competition as is practicable under the circumstances
 - b. the city manager shall furnish copies to the city commission of a written statement certifying the emergency and any other documents relating to the emergency action
 - c. a copy of the statement shall be furnished to the finance director with the voucher authorizing payment
 - d. the city shall comply with requirements of section 2-456 of this ordinance when procurement pertains to construction of municipal public works
- (2) *Single source.* Commodities or contractual services available only from a single source may be excepted from the bid requirements if it is determined that such commodities and services are available only from a single source and such determination is documented in writing.
 - a. the city manager shall furnish copies to the city commission of the written determination of single source availability
 - b. no purchase shall be made without the prior authorization of the city commission
 - c. a copy of the written determination shall be furnished to the finance director with the voucher authorizing payment
 - d. the city shall comply with requirements of section 2-456 of this ordinance when procurement pertains to construction of municipal public works
- (3) *Consolidated purchasing.* In accordance with section 2-403 or section 2-404, procurement of commodities and contractual services may be excepted from the competitive sealed bid requirements of this section if the city is "piggy-backing" or consolidating its procurement with that of another agency or entity constituted for governmental purposes; provided that the commodities or contractual services to be procured have been subjected to competitive sealed bidding by said other agency or entity and documentation of such competitive sealed bidding is included in the official records of the city. The city shall comply with requirements of section 2-456 of this ordinance when procurement pertains to construction of municipal public works
- (4) *Direct Purchases.* Florida Statute provides that, when feasible, governmental

entities may structure contracts to avoid sales tax on public works project materials by purchasing those materials directly from the supplier rather than having the contractor make those purchases. In accordance with the rules of the Department of Revenue, a direct purchase program is the only way to avoid the sales tax on materials incorporated into a public project. To conform to Section 212.08(6), F.S., the City will comply with all basic requirements to qualify for the direct purchase exemption:

- a. the City must issue its own purchase order directly to the supplier;
- b. the City must provide the supplier with a copy of the government's exemption certificate;
- c. payment must be made by the City directly to the supplier;
- d. the City must take title directly from the supplier upon delivery rather than from the contractor after the job is completed; and
- e. the City rather than the contractor must bear the risk of loss of the materials, which is generally established through the contract provisions concerning casualty insurance.

~~(4)~~(5) *Informal Competitive Selection.* Where the scope of a project is small in size, specialized in nature, or possesses such other characteristics that, in combination with existing conditions in the construction market, make it difficult or impossible to obtain responsive bids and a fair and reasonable price through the formal competitive sealed bidding process, procurement through informal competitive selection may be authorized by the city manager.

- a. procurement shall be made with such competition as is practicable after due public notice in accordance with section 2-418(a)(2) of this code and after receipt of written quotes
- b. the city manager shall furnish copies to the city commission of a written statement certifying the need for informal competitive selection
- c. no purchase shall be made without the prior authorization of the city commission
- d. the city shall comply with requirements of section 2-456 of this ordinance when procurement pertains to construction of municipal public works
- e. a copy of the statement shall be furnished to the finance director with the voucher authorizing payment

~~(5)~~(6) *Competitive sealed bid requirements exempted by Chapter 247, F.S.* The following contractual services are not subject to the competitive sealed bid requirements of this section:

- a. artistic services
- b. auditing services
- c. legal services, including attorney, paralegal, expert witness, appraisal or mediator services
- d. health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration
- e. training and education services provided to injured employees pursuant to workers' compensation laws
- f. services provided by governmental agencies

- g. other contractual services exempted from competitive sealed bid requirements by Chapter 247, F.S.

~~(6)~~(7) *Specialized or standardized equipment.* Where specialized or standardized equipment is determined by the city manager to be in the best interest of the public, procurement shall be exempt from the requirements of competitive sealed bidding, provided that such procurement of specialized or standardized equipment shall be made with such competition as is practicable under the circumstances. Documents certifying the need for specialization or standardization shall be furnished to the city commission and shall be furnished to the finance director with the voucher authorizing payment.

~~(7)~~(8) *Surplus property.* Purchase of surplus property shall be exempt from the requirements of competitive sealed bidding. The city manager may provide written authorization to any officer, employee or agency to enter a bid or bids, or make any payment required in connection with such bidding, in the city's behalf for any surplus property offered for lease, sale or other disposal by any governmental agency or private entity if the purchase of such surplus property is deemed by the city manager to be in the best interest of the public.

~~(8)~~(9) *Noncompetitive bid or proposal.* If fewer than three responsive bids or proposals for commodity or contractual services purchases are received, the city manager may negotiate or authorize the negotiation of the best terms and conditions.

(d) *Procurement without competition.* In any procurement that is accomplished without competition, the individuals taking part in the development or selection of criteria for evaluation, the evaluation process, and the award process shall attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected.

(e) *Compliance with competitive sealed bidding requirements.* An agency shall not divide the procurement of commodities or contractual services in order to avoid the requirements of subsections a) or b).

(f) *Extension of contracts.* Extension of a contract for contractual services shall be in writing for a period not to exceed 6 months and shall be subject to the same terms and conditions set forth in the initial contract. There shall be only one extension of a contract unless the failure to meet the criteria set forth in the contract for the completion of the contract is due to events beyond the control of the contractor.

(g) *Renewal of contracts.* Except for those contracts initially procured pursuant to subsection c), contracts for commodities or contractual services may be renewed on a yearly basis for no more than 2 years or for a period no longer than the term of the original contract, whichever period is longer. Renewal of a contract shall be in writing and shall be subject to the same terms and conditions set forth in the original contract. The cost of any contemplated renewals shall be included in the invitation to bid or request for proposals. Renewals shall be contingent upon satisfactory performance evaluation by the agency.

(h) *Selection committee.* For requests for proposals, the city manager will appoint a selection committee of three employees who have experience and knowledge in the program areas and service requirements for which contractual services are required to aid in the selection of contractors for contracts of more than the threshold amount provided for CATEGORY FOUR (\$150,000).

(i) *Preference to minority business enterprise.* Whenever two or more bids which are equal with respect to price, quality and service are received for the procurement of commodities or contractual services, a bid received from a business which certifies that it is

a minority business enterprise shall be given preference in the award process.

(j) *Preference to businesses with drug-free workplace programs.* Whenever two or more bids which are equal with respect to price, quality and service are received for the procurement of commodities or contractual services, a bid received from a business which certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

- (1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- (2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- (3) Give each employee engaged in providing commodities or contractual services that are under bid a copy of the statement specified in paragraph 1).
- (4) In the statement specified in paragraph 1), notify employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893, F.S., or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction.
- (5) Impose a sanction on, or require the satisfactory participation in a drug assistance or rehabilitation program if such is available in the employee's community by any employee who is so convicted.
- (6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

(k) *Review of contract.* Each contract for services procured under this section shall be executed in a form of agreement provided by the city or shall receive legal review and approval as to form before the contract is executed. No contract shall be approved which does not include the minimum provisions required by section 2-406.

(l) *Contract manager.* For each contractual services contract, an employee shall be designated to function as contract manager who shall be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. It will be the responsibility of this employee to maintain a contract file and to ensure that contractual services have been rendered in accordance with the contract terms prior to processing any invoice for payment.

(m) *Record retention.* For procurement of commodities and contractual services in excess of the threshold amount for CATEGORY TWO (\$25,000), the following shall be forwarded to the city clerk for addition to the official records of the city and retention in accordance with the requirements of section 2-481:

- (1) one copy of the invitation to bid or request for proposals
- (2) one copy of all competitive sealed bid or competitive sealed proposal tabulations
- (3) a copy of the city commission minutes documenting the bid award
- (4) the original copy of the executed contract

(n) *Validity of existing contracts.* Nothing in this section shall affect the validity or effect of any contract in existence prior to the adoption of this ordinance.

Secs. 2-419 -- 2-422. Reserved.

DIVISION 3. PROCUREMENT OF PROFESSIONAL SERVICES.

Sec. 2-423. Applicability.

In accordance with the requirements of the "Consultants' Competitive Negotiation Act", section 287.055, F.S., all procurement of professional services as defined in section 2-424, will comply with the provisions of this division when professional services are required for a project and the basic construction cost is estimated to exceed the threshold amount for CATEGORY FIVE (\$250,000) or for a planning or study activity and the fee for professional services is estimated to exceed the threshold amount for CATEGORY TWO (\$25,000), except in cases of valid public emergencies so certified by the city manager.

Sec. 2-424. Definitions.

The following words, terms and phrases, when used in this division, shall have the meaning ascribed to them in this section:

Professional services. Those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined by the laws of the state or those performed by any architect, professional engineer, landscape architect, or registered land surveyor in connection with his professional employment or practice.

Firm. Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or land surveying in the state.

Compensation. The total amount paid for professional services.

Continuing Contract. A contract for professional services entered into in accordance with all the provisions of this division between the city and a firm whereby the firm provides professional services to the city for projects in which construction costs do not exceed \$1,000,000, for study activity when the fee for such service does not exceed \$50,000 or for work of a specified nature as outlined in the contract required by the city, with no time limitation except that the contract shall provide a termination clause.

Project. That fixed capital outlay study or planning activity described in the public notice pursuant to section 2-425. A project may include a grouping of minor construction, rehabilitation or renovation activities or a grouping of substantially similar construction, rehabilitation or renovation activities.

Sec. 2-425. Public announcement and qualification procedures.

(a) Each agency shall publicly announce, in a uniform and consistent manner, a request for qualifications on each occasion when professional services are required in accordance with section 2-426.

(b) A request for qualifications shall be issued which shall include:

- (1) a detailed description of the services required
- (2) the date time and place for submittal of qualifications

- (3) all contractual terms and conditions applicable to the procurement of professional services
- (4) the criteria to be used in determining acceptability of the qualifications

(c) The request for qualifications shall be advertised by the publication of a notice in the legal section of a newspaper of general circulation in the county at least once. A minimum of 15 days shall elapse between the date of publication of such notice and the date of receiving qualifications. In addition, a request for qualifications may be mailed to any firms which are known to be qualified to perform the services required.

(d) Each agency shall encourage firms engaged in the lawful practice of their professions that desire to provide professional services to the agency to annually submit statements of qualifications and performance data.

(e) Any firm or individual desiring to provide professional services to the agency must be certified by the agency as qualified pursuant to law. The agency shall make a finding that the firm or individual to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, experience, whether the firm is a certified minority business enterprise, and other such factors as may be determined by the agency to be applicable to its particular requirements.

(f) If two equal responses to a request for qualifications are received and one response is from a certified minority business enterprise, the agency shall enter into a contract with the certified minority business enterprise.

(g) The public shall not be excluded from the proceedings under this section.

Sec. 2-426. Competitive selection.

For each proposed project exceeding the threshold amounts stipulated in section 2-423, the following requirements shall apply provided that nothing herein shall be construed to prohibit a continuing contract between a firm and the city:

(a) The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by, no fewer than three firms, regarding their qualifications, approach to the project, and ability to furnish the required services.

(b) The agency shall 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 agency shall consider such factors as the ability of professional personnel; status as a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current and projected workload; and the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

(c) The agency may request, accept and consider proposals for the compensation to be paid under the contract only during competitive negotiations under section 2-427.

Sec. 2-427. Competitive negotiation.

(a) The city manager or his designee shall negotiate a contract with the most qualified firm for professional services at compensation which the city manager determines is fair, competitive and reasonable.

- (1) To assist the city manager in making such determination, the agency shall conduct a detailed analysis of the cost of professional services required in addition to considering their scope and complexity.
- (2) For any lump-sum or cost-plus-fixed-fee professional services contract over the threshold amount for CATEGORY FOUR (\$150,000), the agency shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. Any contract under which such certificate is required shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.
 - (b) If the city manager or his designee is unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the city manager determines to be fair, competitive, and reasonable, negotiations with that firm shall be formally terminated. The city manager or his designee shall then undertake negotiations with the second most qualified firm; failing accord with the second most qualified firm, negotiations with that firm shall be formally terminated. The city manager or his designee shall then undertake negotiations with the third most qualified firm.
 - (c) If the city manager or his designee is unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in the order of their competence and qualification, and the city manager or his designee shall continue negotiations in accordance with this section until an agreement is reached.
 - (d) All negotiations shall be formally documented in writing. A copy of said written documentation shall be forwarded to the city clerk for addition to the official records of the city and retention in accordance with the requirements of section 2-481.

Sec. 2-428. Prohibition against contingent fees.

- (a) Each contract entered into by the city for professional services shall contain a prohibition against contingent fees as follows: "The architect (or registered land surveyor or professional engineer, as applicable) warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) to solicit or secure this agreement and that he has not paid or agreed to pay any person, company, corporation, firm or individual, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the city shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
- (b) Any person, company, corporation, firm or individual, other than a bona fide employee working solely for an architect, registered land surveyor or professional engineer, who offers, agrees or contracts to solicit or secure city contracts for professional services for any other person, company, corporation, firm or individual and is paid, or is to be paid, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of a contract with the city for professional services shall, upon conviction in a competent court of this state, be found guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.
- (c) Any architect, registered land surveyor or professional engineer, or any group,

association, company, corporation, firm or partnership thereof, who offers to pay, or pays, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of a contract with the city for professional services shall, upon conviction in a competent court of this state, be found guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.

(d) Any elected or appointed officeholder, employee, consultant or any other person receiving compensation from the city who offers, agrees or contracts to solicit or secure city contracts for professional services for any other person, company, corporation, firm or individual and is paid, or is to be paid, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of a contract with the city for professional services shall, upon conviction in a competent court of this state, be found guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.

Sec. 2-429. State assistance.

In accordance with Chapter 287, F.S., the city manager may, on any professional service contract for which the fee is over \$25,000, request from the Department of Transportation or the Department of Management Services assistance in selecting consultants and in negotiating consultant contracts. The city shall reimburse said departments for any costs involved in providing such assistance.

Sec. 2-430. Reuse of existing plans.

Notwithstanding any other provision of this division, there shall be no public notice requirement or utilization of the selection process as provided in this division for projects in which the city is able to reuse existing plans from prior projects. However, public notice for any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse in accordance with the provisions of this division.

Sec. 2-431. Review of contract.

Each contract for professional services procured under this division shall be executed in a form of agreement provided by the city or shall receive legal review and approval as to form before the contract is executed. No contract shall be approved which does not include the minimum provisions required by section 2-406 and the prohibition against contingent fees as required by section 2-428.

Sec. 2-432. Contract manager.

For each professional services contract, an employee shall be designated to function as contract manager who shall be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. It will be the responsibility of this employee to maintain a contract file and to ensure that contractual services have been rendered in accordance with the contract terms prior to processing any invoice for payment.

Sec. 2-433. Record retention.

For procurement of professional services under this section, the following shall be forwarded to the city clerk for addition to the official records of the city and retention in accordance with the requirements of section 2-481:

- (a) one copy of the request for qualifications and one copy of all responses
- (b) written documentation of the detailed cost analysis
- (c) written documentation of the competitive negotiations
- (d) a copy of the city commission minutes documenting the contract award
- (e) the original copy of the executed contract

Sec. 2-434. Validity of existing contracts.

Nothing in this section shall affect the validity or effect of any contract in existence prior to the adoption of this ordinance.

Secs. 2-435 -- 2-440. Reserved.

DIVISION 4. PROCUREMENT OF DESIGN-BUILD SERVICES.

Sec. 2-441. Applicability.

In accordance with section 287.055, F.S., all design-build contracts in excess of the threshold amount for CATEGORY FOUR (\$150,000) will be procured as provided in this division.

Sec. 2-442. Definitions.

The following terms, when used in this division, shall have the meaning ascribed to them in this section:

Design-build firm. A partnership, corporation, or other legal entity which:

- (1) is certified under s. 489.119, F.S., to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or,
- (2) is certified under s. 471.023, F.S., to practice or to offer to practice engineering; certified under s. 481.219, F.S., to practice or to offer to practice architecture; or certified under s. 481.319, F.S., to practice or offer to practice landscape architecture.

Design-build contract. A single contract with a design-build firm for the design and construction of a public construction project.

Design criteria package. Concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or response to the city's request for proposal, or to permit the city to enter into a negotiated design-build contract.

Design criteria professional. A firm holding a current certificate of registration under Chapter 481, F.S., to practice architecture or landscape architecture or a firm holding a current certificate as a registered engineer under Chapter 471, F.S., to practice engineering and which is employed by or under contract to the city for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

Sec. 2-443. Preparation of the design criteria package.

(a) The design criteria package shall be prepared and sealed by a design criteria professional employed by or retained by the city.

(b) The design criteria package shall specify such performance-based criteria for the public construction project, including, but not limited to, the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provision for utilities, stormwater retention and disposal, and parking requirements, as may be applicable to the project.

(c) The design criteria package shall specify the criteria, procedures and standards for the evaluation of design-build contract proposals or bids.

(d) If the city manager elects to enter into a professional services contract for the preparation of the design criteria package, then the design criteria professional shall be selected and contracted with in accordance with the requirements of division 3 of this article.

(e) A design criteria professional who has been selected to prepare the design criteria package shall not be eligible to render services under a design-build contract pursuant to the design criteria package.

Sec. 2-444. Selection of design-build firms.

The agency shall qualify and select no fewer than three design-build firms deemed to be the most qualified based on the qualifications, availability and past work of the firms, including the partners or members thereof.

Sec. 2-445. Solicitation of competitive proposals.

The agency shall solicit competitive proposals, pursuant to the design criteria package, from those qualified design-build firms and shall evaluate, with the assistance of the employed or retained design criteria professional, the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals and specified in the design criteria package.

Sec. 2-446. Award of the design-build contract.

The contract shall be awarded, after obtaining approval of the city commission, to the qualified design-build firm whose proposal is determined in writing to be the most advantageous to the city, taking into consideration the price and other criteria set forth in the design criteria package. The contract file shall contain the basis on which the award is made.

Sec. 2-447. Emergency conditions.

If the city manager determines that an immediate danger to the public health, safety or welfare or other substantial loss to the public requires emergency action, he may authorize negotiations with the best qualified design-build firm available at the time without the solicitation of competitive proposals. The city manager shall furnish copies to the city commission of a written statement certifying the emergency and any other documents relating to the emergency action.

Sec. 2-448. Review of contract.

Each design-build contract procured under this division shall be executed in a form of agreement provided by the city or shall receive legal review and approval as to form before the contract is executed. No contract shall be approved which does not include the minimum provisions required by section 2-406 and the prohibition against contingent fees required by section 2-428.

Sec. 2-449. Contract supervision and management.

(a) For each design-build contract, the design criteria professional employed or retained by the city shall supervise and approve the detailed working drawings of the project, and evaluate compliance of the project construction with the design criteria package.

(b) For each design-build contract, an employee shall be designated to function as contract manager who shall be responsible for enforcing performance of the contract terms and conditions and serve as a liaison between the design-build firm and the design criteria professional. It will be the responsibility of this employee to maintain a contract file and to

ensure that contractual services have been rendered in accordance with the contract terms prior to processing any invoice for payment.

Sec. 2-450. Record retention.

For each design-build contract procured under this division, the following shall be forwarded to the city clerk for addition to the official records of the city and retention in accordance with the requirements of section 2-481:

- (a) one copy of the design criteria package
- (b) one copy of the solicitation for proposals and one copy of all responses
- (c) written documentation of the selection process
- (d) a copy of the city commission minutes documenting the contract award
- (e) the original copy of the executed contract

Secs. 2-451 -- 2-454. Reserved.

DIVISION 5. PROCUREMENT OF CONSTRUCTION SERVICES.

Sec. 2-455. Definitions.

The following words, terms and phrases, when used in this division, shall have the meaning ascribed to them in this section:

Construction services. The furnishing of labor or materials for the construction, renovation, repair, modification or demolition of any public property, publicly owned building or municipal public works.

Municipal public works. The following activities which are authorized and defined as municipal public works by Chapter 180, F.S.:

- (1) Cleaning and improving street channels or other bodies of water for sanitary purposes;
- (2) Providing means for the regulation of the flow of streams for sanitary purposes;
- (3) Providing a water supply for domestic, municipal or industrial uses;
- (4) Providing for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;
- (5) Providing for the collection and disposal of garbage;
- (6) And incidental to such purposes and to enable the accomplishment of the same, constructing reservoirs, sewage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works;
- (7) Constructing airports, hospitals, jails and golf courses; maintaining, operating and repairing the same; and constructing and operating in addition thereto all machinery and equipment;
- (8) Constructing, operating and maintaining gas plants and distribution systems for domestic, municipal and industrial uses; and
- (9) Constructing such other buildings and facilities as may be required to properly and economically operate and maintain said municipal public works.

Public property and publicly owned buildings. Any facility, building, portion of a

building, park, parking lot, structure or other improvement to real property owned by the city. For the purposes of this article, public property shall include city-owned and maintained streets, alleys, sidewalks and rights-of-way.

Sec. 2-456. Payment and performance bond; bid bond.

(a) Any person, company or corporation entering into a contract with the city for construction services related to municipal public works, public property or publicly owned buildings as defined in section 2-455 shall be required, before commencing the work, to execute, deliver to the city, and record in the public records of the county, a payment and performance bond with a surety insurer authorized to do business in this state as surety; said bond shall comply with the requirements of section 255.05, F.S., and shall be on a standard form provided by the city. At the discretion of the city, any person entering into such a contract which is for \$200,000 or less may be exempted from executing the payment and performance bond.

(b) In lieu of the bond required by this section, a contractor may file with the city an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, or an irrevocable letter of credit.

(c) In lieu of a bid bond required by the competitive sealed bidding process, a contractor may file with the city an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, or an irrevocable letter of credit.

Sec. 2-457. Additional requirements for procurement of services for municipal public works projects.

In addition to all other requirements of this article pertaining to procurement of commodities and services and in accordance with section 180.24, F.S., the following requirements shall apply to the procurement of commodities and services for public works projects as defined in section 2-455:

(a) All contracts for the construction, extension or expansion of public works shall be in writing and the contractor shall be required to provide a bond executed by a surety company authorized to do business in the state; provided, however, that contracts in excess of CATEGORY TWO (\$25,000) shall be advertised by the publication of a notice in the legal section of a newspaper of general circulation in the county at least once each week for 2 consecutive weeks, or by posting three notices in three conspicuous places in the city, one of which shall be the public notices board in city hall; and that a minimum of 10 days shall elapse between the date of the first publication or posting of such notice and the date of receiving bids and the execution of contract documents.

(b) All contracts for the purchase, lease or renting of materials or equipment to be used in the accomplishment of any public works project shall be in writing; provided, however, that where said contract for the purchase, lease or renting of materials or equipment is in excess of \$10,000, notice or advertisement for bids on the same shall be published in accordance with the provisions of subsection (a) herein.

(c) The solicitation of competitive bids or proposals for any construction project that is projected to cost more than \$200,000 shall be publicly advertised at least once in a newspaper of general circulation in the county at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. The solicitation of competitive bids or proposals for any construction project that is projected to cost more than \$500,000 shall be publicly advertised at least once in a newspaper of general circulation in the county at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. Bids or proposals shall be received and opened at the location, date, and time established in the bid or proposal advertisement. In cases of emergency, the procedures required in this section may be altered by the city commission in any manner that is reasonable under the emergency circumstances.

(d) If the location, date, or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made, to all persons who are registered to receive any addenda to the plans and specifications.

(e) A construction project may not be divided into more than one project for the purpose of evading the requirements in this section.

(f) As used in this section, the term "emergency" means an unexpected turn of events that causes:

- 1) An immediate danger to the public health or safety;
- 2) An immediate danger of loss of public or private property; or
- 3) An interruption in the delivery of an essential governmental service.

Sec. 2-458. Additional requirements for procurement of construction services for public property and publicly owned buildings.

In addition to all other requirements of this article pertaining to procurement of commodities and services and in accordance with Chapter 255, F.S., the following requirements shall apply to procurement of construction services for public property and publicly owned buildings as defined in section 2-455:

(a) *Preference to home industries.* In accordance with section 255.041, F.S., the city shall give preference in the purchase of material and in letting contracts for the construction of public buildings to materialmen, contractors, builders, architects, and laborers who reside within the state, whenever such material can be purchased or the services of such materialmen, contractors, builders, architects, and laborers can be employed at no greater expense than that which would exist if such purchase was made from, or contract let or employment given to, a person residing beyond the limits of the state. However, this section in no way prohibits the right of the city to compare the quality of materials proposed for purchase and to compare the qualifications, character, responsibility, and fitness of materialmen, contractors, builders, architects, and laborers proposed for employment in its consideration of the purchase of materials or employment of persons.

(b) *Sole source.* Notwithstanding the foregoing preference to home industries, when letting of contracts or purchasing materials for the construction, modification, alteration or repair of any publicly owned facility, the city may not specify the use of materials or systems by a sole source unless:

- (1) The city commission, after consideration of all available alternative materials and systems, determines that the specification of a sole material or system is justifiable based upon its cost or interchangeability;
- (2) The sole source specification has been recommended by the architect or engineer of record; and
- (3) The consideration by, and the justifications of, the city commission are documented, in writing, in the project file.

(c) *Separate specifications for building contracts.*

- (1) When preparing specifications, awarding or entering into contract for the erection, construction, or altering of publicly owned buildings where the entire cost of such work shall exceed \$10,000, separate specifications may be prepared for each of the following classes of work to be performed:

- a. Heating and ventilating and accessories.
- b. Plumbing and gas fitting and accessories.
- c. Electrical installations.
- d. Air conditioning and accessories.

- (2) All such specifications may be drawn so as to permit separate and independent bidding upon each of the classes of work enumerated above. All contracts for the erection, construction or alteration of buildings, or any part thereof, may be awarded separately to responsible and reliable persons, firms or corporations regularly engaged in their respective line of work; provided, however, that all or any part of the work specified in the above classes may be awarded to the same contractor.

(d) *Shelter in public buildings.* Section 255.042, F.S., requires that consideration be given to providing floor area capable of sheltering 100 or more persons from radiation hazards in the event of nuclear attack when preparing plans and specifications for new public buildings or substantial renovations to existing buildings. Accordingly, the architect, architect-engineer firm or other person or persons involved in the design of such buildings or substantial renovations shall refer to section 255.042, F.S., for guidance in preparing plans and specifications. It shall be the responsibility of the city commission to determine whether cost, or other related factors, precludes or makes impracticable the incorporation of fallout shelter in public buildings.

(e) *Specification of Florida produced lumber.* In accordance with section 255.20, F.S., contracts for public works and contracts for the construction of public bridges, buildings and other structures shall always specify lumber, timber and other forest products produced and manufactured in Florida whenever such products are available --price, fitness and quality being equal. This requirement shall not apply when plywood is specified for monolithic concrete forms, when the structural or service requirements for timber in a particular job cannot be supplied by native species, or when construction is financed in whole or in part from federal funds with the requirements that there be no restrictions as to species or place of manufacture.

(f) *Special facilities for physically disabled.* In accordance with section 255.21, F.S., any building or facility intended for use by the general public which, in whole or in part, is constructed or altered by the city shall, with respect to the altered or newly constructed portion of such building or facility comply with standards and specifications established by section 553.48, F.S.

(g) *Construction management services.* The city may enter into a contract with the State of Florida Division of Building Construction, to provide project management, administration services, or assistance for the construction, renovation, repair, modification, or demolition of city buildings, utilities, parks, parking lots, or other facilities or improvements. The contract shall provide for payment of fees to the division.

Secs. 2-459 -- 2-464. Reserved.

DIVISION 6. PROCUREMENT OF REAL PROPERTY.

Sec. 2-465. Applicability.

In accordance with the requirements of section 166.045, F.S., all real property will be purchased as provided in this division.

Sec. 2-466. Definitions.

The following terms, when used in this division, shall have the meaning ascribed to them in this section:

Extraordinary vote. A vote of the city commission with at least 4 votes cast in the affirmative.

Option contract. A proposed agreement by the city to purchase real property, subject to the approval of the city commission at a public meeting.

Ordinary vote. A vote of the city commission with at least 3 votes cast in the affirmative.

Real property. Buildings and land.

Sec. 2-467. Purchase of real property.

(a) When the city seeks to acquire by purchase any buildings or land for a municipal purpose, every appraisal, offer or counteroffer must be in writing.

(1) Such appraisals, offers and counteroffers are not available for public disclosure or inspection and are exempt from the provisions of section 119.07(1), F.S., until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the city commission.

(2) If a contract or agreement for purchase is not submitted to the city commission for approval, the exemption from section 119.07(1) will expire 30 days after termination of negotiations.

(3) The city shall maintain complete and accurate records of every such appraisal, offer and counteroffer.

(b) The city will not be under any obligation to exercise an option to purchase any buildings or land unless the option contract is approved by the city commission at a public meeting held 30 days after public notice of said meeting.

(c) For each purchase of real property in an amount of not more than \$500,000, the city commission shall require at least one appraisal by a state-certified appraiser.

(d) For each purchase of real property in an amount in excess of \$500,000, the city commission shall require at least two appraisals by state-certified appraisers. If the agreed purchase price exceeds the average appraised price of the two appraisals, the city commission may, by extraordinary vote, approve the purchase.

(e) For each purchase of real property in an amount of \$100,000 or less, the city commission may, by ordinary vote, exempt the purchase from the requirement for an appraisal. Such vote to exempt the purchase from appraisal requirements shall be recorded in the official minutes of the city commission.

Secs. 2-468 -- 2-470. Reserved.

DIVISION 7. RECORD OF ACQUISITION, INVENTORY AND DISPOSAL OF PROPERTY.

Sec. 2-471. Applicability.

In accordance with the requirements of Chapter 274, F.S., record, inventory and disposal of property purchased by the city shall occur as provided in this division.

Sec. 2-472. Definitions.

The following terms, when used in this division, shall have the meaning ascribed to them in this section:

Assets custodian. The head of the department to which the responsibility for maintaining the city's schedule of fixed assets and for implementing the provisions of this division has been delegated.

City attorney. The person serving as the city's agent for the purpose of recording and filing all legal documents and official notifications pursuant to the conveyance of real property to the city.

City clerk. The person to whom responsibility for maintaining the city's official records has been delegated.

Fixed asset. Any equipment, fixture or other tangible personal property of a non-consumable nature owned by the city the value of which equals or exceeds the value provided in section 274.02, F.S., and the normal expected life of which is one (1) year or more. A schedule of fixed assets will be compiled and maintained by the city in a form consistent with the requirements and recommendations of the Auditor General.

Personal property. All equipment, fixtures and other tangible personal property of a non-consumable nature owned by the city.

Property record. A standard form developed by the assets custodian to record the pertinent information about an item to be added to the schedule of fixed assets. Such record shall include, but not be limited to, the name of the department purchasing the item, a detailed physical description of the item, purchase price, date purchased, location of item, model number, serial number, normal expected life, and dates inventoried.

Real property. All buildings and land owned by the city.

Sec. 2-473. Acquisition of tangible personal property.

Whenever acquiring tangible personal property of a non-consumable nature, the city may pay the purchase price in full, exchange city-owned property with the seller as a trade-in and apply the exchange allowance to the cost of the new property acquired, or exchange city-owned property for property with value equal to or greater than the acquisition cost or value of the city-owned property. Authority to exchange tangible personal property in accordance with this section is granted to the city manager by this ordinance.

Sec. 2-474. Record of acquisition and inventory of personal property.

(a) For each acquisition of personal property by purchase, donation, grant, forfeiture, exchange or other means when said property has a value at the time of acquisition equal to or exceeding the value stipulated in section 274.02, F.S., and a normal expected life of one (1) year or more, the department head or his designee shall, provide to the assets custodian a completed property record within five (5) business days after acquisition of the property. If the property is acquired by purchase, a copy of the invoice shall be forwarded to the assets custodian at the same time the invoice is forwarded to the finance department for payment. If the property is acquired by some means other than by purchase, documentation of value in a form acceptable to the finance director shall be forwarded to the assets custodian with the property record.

(b) Upon receipt of the property record from the department, the assets custodian shall add the property to the schedule of fixed assets.

(c) Each item of property which it is possible to identify by marking shall be marked in the manner required by the Auditor General.

(d) A complete physical inventory of all personal property shall be taken annually under the supervision of the assets custodian, and the date inventoried shall be entered on the property record. The inventory shall be compared with the property record and the

schedule of fixed assets, and all discrepancies shall be traced and reconciled.

(e) At the close of each fiscal year, a complete schedule of fixed assets shall be filed by the assets custodian with the city clerk for permanent retention in the official records of the city.

(f) The record-keeping requirements of this section shall apply to all personal property acquired after October 1, 2000. A complete property record in the form required by this section shall be created for property acquired prior to October 1, 2000 and remaining in the city's inventory of personal property on that date.

Sec. 2-475. Record of acquisition and inventory of real property.

(a) For each purchase of real property, the original contract for purchase indicating the price paid for the property shall be forwarded to the city clerk for retention in the official records of the city..

(b) For each acquisition of real property through purchase, donation, foreclosure, tax sale or other means, the city attorney shall forward to the city clerk the recorded original deed or other document conveying ownership to the city. The city attorney shall, at the time of such conveyance, prepare and forward any notifications to the county tax collector, property appraiser, or other officials as may be required to establish date of acquisition, tax-exempt status, and other legal matters relevant to ownership of real property by a municipality.

(c) Upon receipt of the recorded deed or other document conveying ownership of real property to the city, the city clerk shall provide to the assets custodian a completed property record showing the acquisition cost of the property or the value of the property, if donated, and a copy of the deed or conveying document for addition of the property to the schedule of fixed assets. Acquisition cost shall include all legal fees, recording fees, payment of back taxes, and any other costs incurred to effect the conveyance of the property to the city. The city clerk shall file the original recorded deed or conveying document with the official records of the city. The original contract for purchase, where applicable, shall be attached to the recorded deed or conveying document. If all acquisition costs are not known when the property record is initially forwarded to the assets custodian, the city clerk shall notify the assets custodian of such additional costs when they become known, and the assets custodian shall amend the acquisition cost of the property on the schedule of fixed assets.

(d) The record-keeping requirements of this section shall apply to all real property acquired after October 1, 2000. A complete property record in the form required by this section shall be created for real property acquired prior to October 1, 2000 and remaining in the city's inventory of real property on that date.

Sec. 2-476. Disposal of surplus property.

(a) *Classification as surplus property.* The city may classify as surplus any of its real or personal property which is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function or purpose.

(b) *Authority for disposal.* Authority for the disposal of surplus property for which the cost or value at the time of acquisition or construction equals or exceeds the value currently stipulated in section 274.02, F.S., shall be recorded in the official minutes of the city commission. Such authority shall include approval of the method of disposal and estimated current value of the property. Authority for the disposal of surplus property for which the initial cost or value does not equal or exceed the value currently stipulated in section 274.02, F.S., shall be granted to the city manager by this ordinance.

(c) *Method of Disposal.* Within the reasonable exercise of its discretion and taking into consideration the value and condition of such surplus property and the desirability of the property to a prospective bidder, the city shall determine which method of disposal should be

utilized:

- (1) The city may dispose of surplus property by offering the property for bid to other governmental units as follows:
 - (A) the city shall first offer the surplus property to other governmental units in the county; such offer shall disclose the value and condition of the property, and the city shall sell the property to the governmental unit submitting the highest bid.
 - (B) if no acceptable bid is received from governmental units in the county within a reasonable time, the city shall then offer the surplus property to governmental units outside the county; such offer shall disclose the value and condition of the property, and the city shall sell the property to the governmental unit submitting the highest bid.
 - (C) the cost of transferring the property shall be paid by the governmental unit submitting the highest bid.
 - (2) As an alternative to the procedure specified in paragraph (1), the city may dispose of surplus property as follows:
 - (A) property, the value of which the city estimates to be under \$5,000, may be disposed of in the most efficient and cost-effective means as determined by the city
 - (B) property, the value of which the city estimates to be more than \$5,000 shall be sold to the highest responsive bidder or by public auction, after publication of notice not less than 1 week nor more than 2 weeks prior to the sale in a newspaper having a general circulation in the county.
 - (C) property may be disposed of for value without bids to any governmental unit in the state.
 - (D) property which is without commercial value may be donated, destroyed or abandoned.
- (d) *Recordkeeping - surplus equipment.* For each disposal of surplus equipment equal to or exceeding the value stipulated in section 274.02, F.S., or recorded on the schedule of fixed assets, the department head or his designee shall, on a form provided for the purpose, notify the assets custodian to adjust the property record to indicate the date and method of disposal, and the assets custodian shall also indicate such disposal on the schedule of fixed assets.
- (e) *Recordkeeping - surplus land.* For each disposal of surplus land, the city clerk shall, on a form provided for the purpose, notify the assets custodian to adjust the property record to indicate the date and method of disposal, and the assets custodian shall also indicate such disposal on the schedule of fixed assets. The city clerk shall indicate the date and method of disposal on the original deed and transfer the deed to a file containing deeds documenting other such disposals of surplus land for permanent retention in the official records of the city.
- (f) *Recordkeeping - surplus or obsolete buildings, facilities or other improvements.* For each disposal of a surplus or obsolete improvement whether by sale, donation, or demolition, the department head shall, on a form provided for the purpose, notify the assets custodian to adjust the property record to indicate the date and method of disposal, and the assets custodian shall also indicate such disposal on the schedule of fixed assets. Where the improvement is to be demolished with or without replacement, authority for disposal may be requested with approval to award a bid or expend funds for demolition of the improvement or construction of the replacement.

Secs. 2-477 -- 2-479. Reserved.

DIVISION 8. GENERAL ADMINISTRATIVE PROVISIONS.

Sec. 2-480. Standard implementing documents.

(a) All forms required for implementation of the provisions of this article will be standard forms approved by the city manager or his designee and on file in the city clerk's office. No form will be used in connection with this article which has not received the approval of the city manager or his designee.

(b) All invitations to bid, requests for proposals and requests for qualifications will be prepared using standard documents on file in the city clerk's office. Where bid documents or project manuals are prepared by consulting engineers, copies of standard city forms will be provided to said engineers for inclusion in the bid documents or project manuals.

(c) All invitations to bid on projects which are funded, in whole or in part, by federal grants will include forms and other documents required by the federal government and on file in the city clerk's office.

(d) All public notices required under this article will follow a standard format on file in the city clerk's office.

(e) A manual of standard administrative procedures and forms for the implementation of this article will be compiled by the city manager or his designee and utilized by all departments, divisions, boards or commissions when procuring any property or services on behalf of the City of Lake Wales. A copy of such manual will be on file in the city clerk's office.

Sec. 2-481. Compliance with records laws.

(a) All documents created subsequent to this article will be complete, will be dated, and will bear the proper authorizing signatures. It will be the responsibility of the department, division, board or commission creating the document to ensure compliance with this requirement.

(b) All documents created or received subsequent to this article will be maintained in accordance with the provisions of Chapter 119, F.S., Public Records.

(c) All documents created or received subsequent to this article will be retained in accordance with General Records Schedule for Local Government Agencies, BC-1 revised, promulgated by the Division of Library and Information Services of the Department of State, as that schedule currently exists or as it may be revised in the future.

Secs. 2-482 -- 2-485. Reserved.

DIVISION 9. CDBG PROCUREMENT AND ACQUISITION PROCEDURES

Sec. 2-486. Procurement Procedures for Community Development Block Grant Program

(a) *CDBG Procurement Policy.* It is the policy of the City of Lake Wales to obtain commodities and services efficiently and effectively in free and open competition for the Community Development Block Grant (CDBG) Program through the use of sound procurement practices. All City staff and other persons with designated responsibility for the administration of CDBG award contracts are responsible for ensuring compliance with all applicable federal and state laws and regulations. These include but are not limited to: 24 CFR 85.36, OM8 Circular A-102, Attachment 0, Chapter 98-43 Florida Administrative Code and Chapter 287, Florida Statutes, as applicable.

(b) *City Procurement Policy.* The City's policy for procurement of commodities and services shall govern the procurement of commodities and services for CDBG program activities, except as provided herein.

(c) *Small Purchases.*

1. All procurement of commodities or services in excess of \$500 shall require a written agreement embodying all provision and conditions thereof.
2. All CDBG related procurement of commodities or services less than \$500 may be approved by the city manager or his/her authorized representative without a competitive bid process.
3. All procurement of commodities or services in excess of \$500 and less than \$5000 may be entered only after informal competition based on offers or quotes from not less than three (3) vendors.
4. Procurement shall be made by one of the following methods, as described below: (a) small purchase procedures; (b) competitive sealed bids (formal advertising); (c) competitive negotiation; or (d) noncompetitive negotiation:

(d) *Competitive Sealed Bids.*

1. Purchases greater than \$5,000 shall be by Competitive Sealed Bids, unless the City Manager or his/her authorized representative certifies in writing that sealed bidding is not practicable or advantageous, in which case the procurement shall be competitive negotiation in conformance with Section 287.057(3), Florida Statutes and 24 CFR 85.36(d)(3)(i).
2. In the competitive sealed bid method of procurement (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest reasonable price.
3. In order for a sealed bid procedure to be feasible, certain conditions must be present, including, at a minimum, the following:
 - A. a complete, adequate and realistic specification or purchase description; and
 - B. two or more responsible suppliers or contractors are willing and able to compete effectively for the business.
4. The inability or failure to obtain more than one bid shall not prohibit the local government from approving the bid, if it is demonstrated that other prospective vendors or contractors have been given adequate notice of the procurement and an opportunity to participate and have declined to submit bids. Also, as part of the City's evaluation as to whether to award a sole bid, the City shall conduct a cost analysis of the bid to determine if the cost is reasonable. The cost analysis shall include a review of profit. In addition, the City shall request permission from the grant agency prior to awarding a sole bid.
5. The following procedure will be followed under the sealed bid procedure:
 - A. At least twelve (12) days prior to the date set for opening of bids, the invitation to bid shall be publicly noticed in a newspaper of general circulation in the City as defined in Section 50.011 Florida Statutes and at least one newspaper of regional circulation. Special note: the State program rule allows two advertisement procedures for procurements which require public notice. Accordingly, the City has the option of advertising for bids in a nearby OMB

designated Metropolitan Statistical Area (Winter Haven). This advertising procedure allows award of a contract if only one firm submits a bid or proposal. The second procedure allows advertisement in a local newspaper and/or mailed solicitations, but requires at least three responsive and responsible bids or proposals received. In the case of Housing Programs the City may place a public notice for a request for qualified contractors to participate in a Bid List. Such public notice requests shall be published every six months during the bid and construction phase of a housing grant. Notification of Invitations to bid each project will be sent to firms on the approved Bid List. Qualified firms may apply to be placed on the Bid List at any time.

- B. The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation, state the deadline for submission of sealed bids, state the time and place when and where the sealed bids will be publicly opened and read aloud, and state bid bond requirements, if any.
- C. All bids shall be opened publicly at the time and place stated in the invitation for bids
- D. The criteria for selection of the vendor or contractor and awarding a firm-fixed-price or firm-fixed-unit-price contract shall be the responsible bidder whose bid, conforming to the invitation for bids, is the lowest reasonable price. Where specified in the bid documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. The award notice shall be made in writing to the selected bidder .
- E. The City reserves the right to waive any minor irregularity or technicality or to reject any and all bids.

(e) *Competitive Negotiation.*

- 1. Professional services are often procured by competitive negotiation. In competitive negotiation, proposals are requested from a number of sources and a Request for Statements of Qualifications and/or Proposals is publicized. Qualifications and/or Proposals are ranked and negotiations are conducted with one or more of the sources submitting offers, and either a fixed-fee or cost reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of competitive sealed bids. Special note: CDBG rules do not allow cost reimbursement contracts to be paid for with CDBG funds, though fixed fee is allowable.
- 2. The following procedure will be followed under the competitive negotiation procedure
 - A. Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Statements of Qualifications and/or Proposals shall be publicly noticed at least twelve (12) days prior to the date set for receipt of Statements of Qualifications and/or Proposals in a newspaper of general circulation in the City as defined in Section 50.011 Florida Statutes and at least one newspaper of regional circulation. Special note: the State program rule allows two advertisement procedures for procurements which require public notice. Accordingly, the City has the option of advertising for bids in a nearby OMB designated Metropolitan Statistical Area (Winter Haven). This advertising procedure allows award of a contract if only one firm submits a bid or proposal. The second procedure allows advertisement in a local newspaper and/or mailed solicitations, but requires at least three responsive and responsible bids or proposals received.

- B. The Request for Statements of Qualifications and/or Proposals shall identify the deadline for submission of Statements of Qualifications and/or Proposals, minimum qualifications. All evaluation factors, including price or cost where required and their relative importance, and state that the City will conduct a cost or price analysis for the proposed price, including evaluation of profit.
- C. The procedure for review of Statements of Qualifications and/or Proposals shall be as follows:
 - i. Each member of a selection committee receives and reviews all proposals. The selection committee is composed of no fewer than four and no more than six members appointed by the city manager.
 - ii. Each reviewer is provided a Ranking Sheet and scores each proposal in accordance with the published evaluation criteria.
 - iii. Completed ranking sheets are submitted to a designated member of the selection committee to tally prior to the city commission meeting at which the results of the committee's review are to be announced. Proposals are ranked by score and the ranking is read at the city commission meeting.
 - iv. The city commission authorizes the city manager to enter negotiations with the highest ranked proposer, specifying any conditions to be met, and authorizes the city manager to prepare an agreement for the services if the negotiation is mutually acceptable.
 - v. If a mutually acceptable agreement cannot be reached the city manager is to enter negotiations with the next highest ranked proposer until a mutually acceptable agreement is reached.
 - vi. An award of a fixed fee or cost reimbursable contract shall be made to the responsible offerer in writing whose proposal will be most advantageous to the City, price and other factors considered. Unsuccessful offerers shall be notified in writing.
 - vii. The City will abide by the Competitive Negotiation Act, Section 287.055, Florida Statutes, as amended, when procuring the services of architects or engineers. The provisions of these procurement procedures shall not be construed to conflict or supersede the requirements of Section 287.055, Florida Statutes, as amended, or any other applicable state or federal law.

(f) *Noncompetitive Negotiations.*

- 1. Nothing herein shall limit the City to except from the requirement of competition commodities and services available only from a single source or procurement from another unit of government.
- 2. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive sealed bid or competitive negotiation procedures.
- 3. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:
 - A. The item is available only from a single source;
 - B. Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation; Special note: This type of procedure requires prior approval from the State agency that administers the CDBG grant if the cost will be \$25,000 or greater. Approval is very rarely given.
 - C. After solicitation of a number of sources, competition is determined inadequate;
 - D. The contract item is available under a State of Florida negotiated blanket contract;

E. The goods and/or services are procured from another unit of government.

4. For procurements exceeding \$25,000 the City shall obtain written permission from the Florida Department of Community Affairs prior to entering into any contract procured as a result of inadequate competition, a sole source or a non-competitive procurement negotiation based upon whether the criteria in 24 CFR Section 85.36(d)(4) have been satisfied. For contracts below \$25,000 the City shall document the justification for procurement with inadequate competition from a sole source or based on noncompetitive negotiation pursuant to 24 CFR Section 85.36.

(g) *Bid Protest.*

1. Any actual or prospective bidder, offerer, or contractor who is aggrieved in connection with the solicitation or award of contract may protest to the city commission. Protestors shall seek resolution of their complaints initially with the city manager prior to protesting to the city commission.
2. Protests must be in writing and received within ten (10) days of the bid opening by the city manager. The written protest shall identify the protestant and the solicitation involved; include a plain, clear statement of the grounds on which the protest is based; and refer to the statutes, laws, ordinances, or other legal authorities which the protestant deems himself entitled by application of such authorities to such grounds.
3. The city manager will meet with the protestant to review the matter and shall render a written settlement decision within 21 days of the written protest. If the settlement decision is unacceptable to the protestant, the protestant may then make the protest directly to the city commission.
4. In no case will the protesting bidder or offerer be entitled to any costs incurred with the solicitation, including bid preparation costs and attorney's fees.
5. In the event of a timely protest under this Section, the city manager shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the city manager makes a written determination that the award of a contract without delay is necessary to protect the substantial interest of the City.

(h) *Documentation.*

1. The City will retain records to demonstrate the rationale for choosing the method of procurement, contractor qualifications, contract specifications or scope of work, the basis for selection or rejection of the contractor and the basis for the contract price.
2. Purchases other than small purchases must be approved by the governing body and such authorization must be reflected in the minutes.

(i) *Affirmative Action.* The City is committed to elimination discrimination based on race, color, religion, sex, national origin, age, or physical handicap.

(j) *Travel Expenses.* All travel payments shall conform to the allowances provided in Chapter 112.061, Florida Statutes, as amended. Reimbursement for travel expenses will be paid to an employee only after the submission of an itemized statement of expenses.

(k) *Code of Ethics.*

3. No employee, officer or agent of the local government shall participate in selection, or in the awards or administration of a contract supported by public funds if a conflict of interest, real or apparent, would be created. Such a conflict would arise when:

- i. an employee, officer or agent of the local government;
 - ii. any member of his or her immediate family;
 - iii. his or her partner; or
 - v. an organization which employs, or is about to employ, any of the above has a financial or other interest in the firm selected for the award.
- 4. Local government officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. However, as permitted by 24 CFR 85.36(3)(i) this section will not be held to apply if the gift is an unsolicited item of nominal intrinsic value (less than \$25).
- 5. All public employees, officers, or agents of the local government are further bound by the provisions of Chapter 112.313, Florida Statutes, the statutory code of ethics covering all public employees, including elected officials.
- 6. Violations of this Code of Ethics may result in civil penalties of up to \$10,000 pursuant to Chapter 112, Florida Statutes.

(l) Other Provisions.

- 1. All contracts shall conform to 24 CFR 85.36(i) and Section 287.055 Florida Statutes and contain clauses which address:
 - A. termination for cause;
 - B. termination for convenience;
 - C. access to project records by the grantee, sub-grantee, state and/or federal officials or their representatives;
 - D. retention of project records for at least three years after project closeout;
 - E. suspension of work;
 - F. administrative, contractual or legal remedies for violation or breach of contract and provide for such sanctions and penalties as may be appropriate;
 - G. Public Entities Crimes statement;
 - H. Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60). (All construction contracts in excess of \$10,000)
 - I. Compliance with the Copeland "Anti-Kickback" Act (18USC874) as supplemented in Department of Labor regulations (29 CFR Part 3);
 - J. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented in Department of Labor regulations (29 CFR Part 5);
 - K. All contracts covered by Section 3 regulations shall contain the language required in 24 CFR 135.38;
 - L. Engineering contracts shall also contain a prohibition on contingent fees, Truth-in-Negotiation Certification and, for contracts over \$60,000, a price adjustment

clause.

2. All contracts for professional services shall conform to the following:
 - A. Any Request for Proposals which includes more than one service shall provide that:
 - i. proposals may be submitted for one or more of the services;
 - ii. proposals will be considered on an equal competitive basis;
 - iii. qualifications and proposals should be separately stated for each service;
 - iv. the evaluation of the proposals should be separate for each service.
 - B. A separate professional services contract shall be procured and executed between the City and the consultant for each particular Community Development Block Grant. Each advertisement for procurement of Community Development Block Grant professional services, except for grant application preparation, must specify the scope of work, program category and Community Development Block Grant cycle by federal fiscal year or Florida Department of Community Affairs award number.
 - C. Those types of services having a relatively undefined scope, such as program management or administration, and those services of a more defined scope, such as engineering or architectural design, must be separated from each other into individual contracts.
 - D. Each services contract must identify by award agreement number and individual project the grant to which it is applicable.
 - E. 24 CFR 85 establishes that a general conflict may exist where a local government awards a multi-service contract to a firm to administer its Community Development Block Grant program, while at the same time the same firm is to provide a service, such as engineering, where the administrator must oversee and approve its own work. In such cases where the administrator oversees its own engineering services, the services of an independent third party shall be obtained to provide the necessary oversight and approvals.
 - F. If a Community Development Block Grant and other sources of funding are being jointly used to fund activities under a single contract (excluding housing construction or housing rehabilitation contracts), the activities to be paid for with Community Development Block Grant funds must be shown as a separate line item or alternative (deducted or added) in the procurement documents.

(m) *Authority.* Where there is a conflict between the various statutes, regulations or codes, statutes shall govern over regulations, regulations over codes, and federal laws over state laws.

(n) *Applicability.* The policies and procedures contained in this section shall be applicable to all procurement of commodities and services involving CDBG funds.

(o) *Process for seeking out bids or proposals for Minority Business Enterprises or Women-owned Business Enterprises.* The City shall encourage the utilization of Minority Business Enterprises or Women-owned Business Enterprises by complying with the provisions of its Affirmative Action Policy adopted by Resolution 2002-18 on November 5, 2002, which is incorporated herein by reference.

Sec. 2-487. Acquisition procedures for Community Development Block Grant Program.

(a) Voluntary Acquisition.

1. A voluntary acquisition occurs when real property is acquired from an owner who has

submitted a proposal to the recipient for purchase of their property in response to a public invitation or solicitation of offers. The local governing body is committed to this mode of acquisition to the maximum practicable extent.

2. Voluntary acquisition shall be permitted only if the property being acquired is not site specific and at least two properties in the community meet the criteria established by the local government for usage, location and/or interest to be acquired. All voluntary acquisitions must be approved in principle by the elected governing body prior to publication of a public notice or attendance of any local government representative at a property auction.
3. A public notice must be published inviting offers from property owners. This notice must:
 - A. accurately describe the type, size and approximate location of the property it wishes to acquire;
 - B. describe the purpose of the purchase;
 - C. specify all terms and conditions of sale, including maximum price;
 - D. indicate whether or not an owner-occupant must waive relocation benefits as a condition of sale;
 - E. announce a time and place for offers to be accepted; and
 - F. announce that local powers of condemnation shall not be invoked to acquire any property offered for which a mutually agreed to sale price can not be reached.
4. Property may also be acquired at auction. The Uniform Relocation Act does not apply to voluntary acquisitions.
5. In each voluntary acquisition, a public solicitation shall occur. Offers shall be sealed and opened at the same time, in the same place, by a responsible official. Records of offers shall be kept. Appraisals are not required for purchases less than \$2500 if a mutually agreed to sales price can be reached. Clear title must be present in every transaction. The local governing body must decide at the time of approving the acquisition whether or not appraisals and review appraisals will be necessary and what the maximum permissible sales price will be. The decision to acquire will rest with the governing body which can reject or accept any and all offers. Written records shall be maintained documenting decisions and rationale for selected course of action.

(b) Non-voluntary acquisition.

1. Acquisition of property (including easements and right of way) using federal funds shall occur in accordance with the Uniform Relocation Act of 1970 (as amended) and with any State and Federal regulations which may apply.
2. Fundamental steps which will occur in each purchase may vary case by case. However, in general terms, the following should take place: (1) source of funds and authority to acquire confirmed, (2) property/site identified and suitable, (3) legal description/survey/preliminary title search performed (services procured as necessary), (4) notice of intent to acquire sent owner, (5) appraisal and review appraisal services solicited and appraiser retained, (6) appraisal received and sent for review, (7) title companies solicited and retained after review received (title insurance amount and necessity determined in advance), (8) offer to purchase and notice of just compensation sent owner, (9) owner contacted by attorney or other representative and contract formalized, (10) settlement costs calculated and closing date set, (11) closing conducted with funds changing hands and, (12) records of

proceedings retained.

3. The Uniform Relocation Act requires certain specific procedures such as some letters sent being sent certified. The CDBG Implementation Manual provides a checklist which may be utilized in following each transaction to successful conclusion.

(c) *Timing and planning.*

1. Properties necessary for easements or acquisition shall be identified as early in the planning stage as is practicable. Every attempt shall be made to effect a design which is not wholly site dependent, that is, where two or more sites are suitable for the project. It is recognized this may not always be possible, however, a policy of minimizing single site alternatives is emphasized.
2. The voluntary acquisition process shall be utilized to identify possible sites early in the project. Sites shall be evaluated for suitability prior to the final design phase to the maximum practicable extent. As soon as alternative sites are identified and evaluated, applicable acquisition procedures should commence.
3. Projects shall not normally be sent out for bids unless properties to be acquired or utilized for easements have been formally acquired or a commitment exists which is sufficiently firm and binding to be considered safe for the project to proceed with start up. The elected body shall make the determination as to whether or not bidding, award and start up may proceed prior to closing on the property.
4. In those cases where need for easements and/or acquisition is not identified until after the project is underway, procedures shall be expedited to the maximum practicable extent and utilization of funds, the value of which would be unrecoverable if the transaction did not occur, minimized.

(d) *Applicability.* The policies and procedures contained in this section shall be applicable to all acquisitions of property involving CDBG funds.

Secs. 2-488 -- 2-499. Reserved.

SECTION 2. If any clause, section, or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

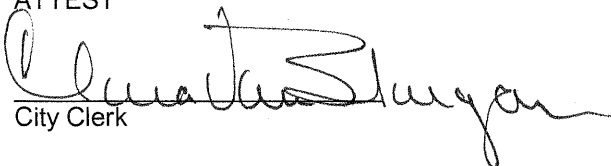
SECTION 3. This ordinance shall take effect immediately upon adoption by the City Commission of the City of Lake Wales, Polk County, Florida.

CERTIFIED AS TO ADOPTION this 20th day of December, 2011.



Mayor/Commissioner

ATTEST



City Clerk