

## ORDINANCE 2017-18

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION, LAKE WALES CODE OF ORDINANCES, TO INCORPORATE CDBG PROCUREMENT AND ACQUISITION PROCEDURES; 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, Article IV. Procurement of Property and Services, Lake Wales Code of Ordinances is hereby amended to read as follows:

**§ 2-486. Procurement procedures for community development block grant program.**

(a) *CDBG procurement policy.* It is the policy of the City 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, OMB Circular A-102, Attachment 0, Chapter 98-43 Florida Administrative Code and F.S. ch. 287, 255.0525, 2 CFR Part 200.317-.326, Rule 73c- 23 Florida Administrative Code 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.

The City's Purchasing Specialist or his or her designee shall serve as the central purchasing officer (the "Purchasing Officer") of the City of Lake Wales for all contracts or agreements described herein. The following cost categories for CDBG purchases shall be used to determine applicable purchasing and contract award procedures:

(c) *Small purchases.*

(1) All procurement of commodities or services in excess of five hundred dollars (\$500.00) shall require a written agreement embodying all provisions and conditions thereof.

(2) All CDBG related procurement of commodities or services less than five hundred dollars (\$500.00) 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 five hundred dollars (\$500.00) and less than five thousand dollars (\$5,000.00) 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 (1) of the following methods, as described below:

- a. Small purchase procedures.
- b. Competitive sealed bids (formal advertising).
- c. Competitive negotiation.
- d. Noncompetitive negotiation.

(d) *Competitive sealed bids.*

(1) Purchases greater than five thousand dollars (\$5,000.00), including purchases up to \$100,000 and greater, 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 F.S. § 287.057(3) and 24 CFR 85.36(d)(3)(i). The competitive sealed bid procedure described herein shall also be consistent with 2CFR200.320 (b).

(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 (2) 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 (1) 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 F.S. § 50.011, and at least one (1) newspaper of regional circulation. Special note: the state program rule allows two (2) 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 (1) firm submits a bid or proposal. The second procedure allows advertisement in a local newspaper and/or mailed solicitations, but requires at least three (3) 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 (6) 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.

Under Section 255.0525(2), F.S. and Rule 73-23.00521(2)(a), F.A.C., an invitation to bid for construction projects that are projected to cost more than \$200,000.00 shall be published in at least one newspaper of general circulation in POLK County as well as a nearby federal Office of Management and Budget (OMB) designated metropolitan statistical area (MSA) at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. An invitation to bid for construction projects that are projected to cost more than \$500,000.00 shall be publicly advertised at least once in a newspaper of general circulation in POLK County at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. Additionally, Notice shall be sent to those vendors and contractors on the City's MBE/WBE solicitation list. Alternatively, the City may substitute the above notice with any solicitation procedure which generates at least three responsible and responsive bids or proposals which can be considered. However, if three responsible and responsive bids or proposals are not received, the procurement will be invalid.

An Invitation to Bid shall be issued and shall include specifications, all contractual terms and conditions, and the place, date, and time for opening or submittal. No later than five working days prior to the date for receipts of bids, a vendor shall make a written request to the City for interpretations or corrections of any ambiguity, inconsistency, or error which the vendor may discover. All interpretations or corrections will be issued as addenda. The City will not be responsible for oral clarifications. No negotiations, decisions, or actions shall be initiated or executed by the proposer as a result of any discussions with any City employee prior to the opening of proposals. Only those communications which are in writing from the City may be considered as a duly authorized expression on the behalf of the Commission. Also, only communications from firms or individuals which are in writing and signed will be recognized by the Commission as duly authorized expressions on behalf of proposers.

1. Alternate(s). Alternate bids will not be considered unless authorized by and defined in the Special Conditions of the bid specifications.

2. Approved Equivalents. The City reserves the right to determine acceptance of item(s) as an approved equivalent. Bids which do not comply with the stated requirements for equivalents in the bid conditions are subject to rejection. The procedure for acceptance of equivalents shall be included in the general conditions of the bid.

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 (1) 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 F.S. § 50.011 and at least one (1) newspaper of regional

circulation. Special note: the state program rule allows two (2) 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 (1) firm submits a bid or proposal. The second procedure allows advertisement in a local newspaper and/or mailed solicitations, but requires at least three (3) 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:

1. Each member of a selection committee receives and reviews all proposals. The selection committee is composed of no fewer than four (4) and no more than six (6) members appointed by the City Manager.

2. Each reviewer is provided a ranking sheet and scores each proposal in accordance with the published evaluation criteria.

3. 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.

4. 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.

5. 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.

6. 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.

7. The City will abide by the Competitive Negotiation Act, F. S. § 287.055, 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 F.S. § 287.055, as amended, or any other applicable state or federal law. Procurement consistent F. S. § 287.055, shall include the following procedures:

Public Announcement. It is the policy of the City to publicly announce all requirements for professional architectural, engineering, landscape architectural, and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the City may require firms to submit a statement of qualifications, performance data, and other related information for the performance of professional services. The City shall procure professional architectural, engineering, landscape architectural, and land surveying services consistent with the provisions of Chapter 287.017 (the Consultants Competitive Negotiation Act, which is also referred to as CCNA), Chapter 287.055 and [2CFR200.320(d) (5)].

Scope of Project Requirements. Prior to submission of the request for proposals for professional services as an agenda item for approval by the Commission, the Purchasing Officer shall consult with the City Manager to review the written project requirements, which shall include at least the following information:

- (a) the general purpose of the services or study;
- (b) the objectives of the study or services;
- (c) estimated period of time needed for the services or the study;
- (d) the estimated cost of the service or study;
- (e) whether the proposed study or service would or would not duplicate any prior or existing study or services;
- (f) list of current contracts or prior services or studies which are related to the proposed study or service;
- (g) the described qualifications, listed in order of importance, of the person or firm applicable to the scope and nature of the services requested.

8. Distribution of Project Requirements. The Purchasing Officer shall distribute the written project requirements as approved by the City Commission to all persons on the mailing list who have indicated an interest in being considered for the performance of such professional services and to any additional persons as the Purchasing Officer or using agency deems desirable. The written project requirements shall be consistent with Chapter 287.017 (the Consultants Competitive Negotiation Act, which is also referred to as CCNA), Chapter 287.055 and [2CFR200.320(d) (5)]. Consistent with the CCNA, price information shall not be requested prior to negotiation with the firm or individual that is selected to provide the requested service. The written project requirements shall include a statement of the relative importance of each of the requirements. The project requirements shall be accompanied by an Invitation to such persons to submit an indication of interest in performing the required services, and by

notification of the date and time when such indications of interest are due. This date shall not be less than fourteen calendar days from the date of public notice when the Purchasing Officer shall published in at least one newspaper of general circulation in the County where the project is located and in a nearby federal Office of Management and Budget (OMB) designated metropolitan statistical area (MSA). Alternatively, the City may substitute the above notice with any solicitation procedure which generates at least three responsible and responsive bids or proposals which can be considered. However, if three responsible and responsive bids or proposals are not received, the procurement will be invalid.

9. Modification Prohibition. After the publicized submission time and date, indications of interest shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed by the Selection Committee (defined in Section 4.051B) prior to making its selection of those best qualified to be formally interviewed.

10. Reuse of Existing Plans. There shall be no public notice requirements or utilization of the selection process as provided in this section for projects in which the City is able to reuse existing plans from a prior project. However, public notice of 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.

11. Selection Committee Membership and Evaluation. Depending on the expected complexity and expense of the professional services to be contracted, the City may determine whether a three member or five member selection committee will best serve the needs of the Commission.

12. Three Member Committee Composition. Membership of a three-member selection committee shall be appointed by the City Commission.

13. Five Member Committee Composition. Membership of a five-member selection committee shall be appointed by the City Commission.

14. Selection Committee Evaluation. Only written responses of statements of qualifications, performance data, and other data received in the purchasing office by the publicized submission time and date shall be evaluated. Only those respondents who are determined to be best qualified based upon the evaluation of written responses and selected for Formal interview may submit additional data. From among those persons evidencing, by timely submission of written responses, an interest in performing the services the Selection Committee shall:

(a) prepare an alphabetical list of those persons determined by the Selection Committee to be qualified, interested and available; and

(b) designate no less than three persons on the alphabetical list considered by the Selection Committee to be best qualified to perform the work required.

(c) Shortlisting. The best qualified respondents shall be based upon the Selection Committee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed. The Selection Committee shall determine qualifications, interest, and availability by reviewing the written responses that express an interest in performing the services. The committee may also conduct formal interviews if desired. The determination of the best qualified respondent may be based upon, but not limited to, the following considerations:

- (1) competence, including technical educational and training, experience in the kind of project to be undertaken, availability of adequate personnel, equipment and facilities, the extent of repeat business of the persons, and where applicable, the relationship of construction costs estimates by the person to actual cost on previous projects;
- (2) current work load;
- (3) financial responsibilities;
- (4) ability to observe and advise whether plans and specifications are being compiled with, where applicable;
- (5) record of professional accomplishments;
- (6) proximity to the project involved, if applicable;
- (7) record of performance; and
- (8) ability to design an approach and work plan to meet the project requirements, where applicable

(d) Interview and Commission Approval. If formal interviews are conducted, the Selection Committee shall list those respondents interviewed in order of preference based upon the considerations listed in subsection (4) above. The respondents so listed shall be considered to be the most qualified and shall be listed in order of preference starting at the top of the list. The list of best qualified persons shall be forwarded to the Commission for approval prior to beginning contract negotiations. Negotiation sequence shall be based on the order of preference.

- (1) Negotiation Staff. Contract negotiations shall be conducted by the Purchasing Officer unless the Commission President directs that negotiations be conducted by a Negotiation Committee.
- (2) Negotiation. The Purchasing Officer or the Negotiation Committee shall negotiate a contract with the firm considered to be the most qualified to provide the services at compensation and upon terms which the Purchasing Officer or the Negotiation Committee determines to be fair and reasonable to the City. In making this decision, the Purchasing Officer or the Negotiation Committee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. As a part of the negotiation, the Purchasing Officer or the Negotiation Committee shall conduct a cost analysis, including evaluation of profit, based on a cost breakout by the firm of its proposed price. Should the Purchasing Officer or the Negotiations Committee be unable to negotiate a satisfactory contract with



the firm considered to be the most qualified, negotiations with that firm will be formally terminated. The Purchasing Officer or the Negotiation Committee shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Purchasing Officer or the Negotiation Committee shall formally terminate negotiations, and then shall undertake negotiations with the third most qualified firm. Should the Purchasing Officer or the Negotiation Committee be unable to negotiate a satisfactory contract with any of the selected firms, the Selection Committee shall select additional firms in order of their competence and qualifications, and the Purchasing Officer or Negotiation Committee shall continue negotiations in accordance with this section until an agreement is reached or until a determination has been made not to contract for services.

(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: Consistent with 2CFR200.320(f), this type of procedure requires prior approval from the state agency that administers the CDBG grant if the cost will be thirty-twenty five thousand dollars (~~\$35,000.00~~) (\$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 thirty twenty-five thousand dollars (~~\$3~~ 25,000.00) the City shall obtain written permission from the state department of ~~community~~ economic affairs opportunity 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 85.36(d)(4) have been satisfied. For contracts below thirty twenty -five thousand dollars (~~\$3~~ 25,000.00) the City shall

document the justification for procurement with inadequate competition from a sole source or based on noncompetitive negotiation pursuant to 24 CFR 85.36.

(5) The procurement for all professional services and any contract resulting from a non-competitive procurement process must meet the requirements of 2 CFR 200.317-.326 and Section 287.055 of the Florida Statutes. The City's Purchasing Officer must conduct a cost or price analysis of all proposed prices on sole source purchases, analysis shall include a review of profit as a separate element. Sole source purchases must be approved by DEO in writing

(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 twenty-one (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.

(6) Awards in Violation of Law

a. Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Purchasing Officer after consultation with the City Attorney, determines that a solicitation is in violation of federal, state, or local law or ordinance, then the solicitation shall be canceled or revised to comply with applicable law.

b. Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award contract, the Purchasing Officer after consultation with the City Attorney, determines that a solicitation or a proposed award of a contract is in

violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.

c. After Award. If, after award, the Purchasing Officer after consultation with the City Attorney, determine that a solicitation or award of a contract was in violation of applicable law or ordinance, then:

(1) If the person awarded the contract has not acted fraudulently or in bad faith:

(a) the contract may be terminated and the person awarded the contract shall be compensated for actual costs reasonably incurred under the contract plus a reasonable profit, but excluding attorney's fees, prior to termination; or

(b) If the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best 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 of 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 F.S. ch. 112.061, as amended from time to time. Reimbursement for travel expenses will be paid to an employee only after the submission of an itemized statement of expenses.

(k) *Code of ethics.*

(1) 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:

a. An employee, officer, or agent of the local government;

b. Any member of his or her immediate family;

c. His or her partner; or

d. 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.

(2) 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 twenty-five dollars (\$25.00)).

(3) All public employees, officers, or agents of the local government are further bound by more stringent standards of ethical conduct than those set forth in the provisions of F.S. §§ 112.311—112.326, the statutory code of ethics covering all public employees, including elected officials.

(4) Violations of this code of ethics may result in civil penalties of up to ten thousand dollars (\$10,000.00) pursuant to F.S. ch. 112.

(l) *Other provisions.*

(1) All contracts shall conform to 24 CFR 85.36(i) and F.S. § 287.055 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 (3) 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 ten thousand dollars (\$10,000.00))
- 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 sixty thousand dollars (\$60,000.00), 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 (1) service shall provide that:

1. Proposals may be submitted for one (1) or more of the services;
2. Proposals will be considered on an equal competitive basis;
3. Qualifications and proposals should be separately stated for each service;
4. 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 state 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 in a manner that is consistent with 2CFR200.321 and by complying with the provisions of its affirmative action policy adopted by Resolution 2002-18 on November 5, 2002, as amended, which is incorporated herein by reference.

(m) Use of Brand Name or Equivalent Specifications

- (1) Brand name or equivalent specifications may be used when the City determines that:
  - a. no other design, performance, or qualified product list is available;
  - b. time does not permit the preparation of another form of purchase description, not including a brand name specification;
  - c. the nature of the product or the nature of the City requirements makes use of a brand name equivalent specifications suitable for the procurement; or
  - d. use of brand name or equivalent specification is in the City's best interest.
- (2) Designation of Several Brand Names. Brand names or equivalent specifications shall seek to designate three, or as many different brands as are practicable, as "or equivalent" references and shall further state the substantially equivalent products to those designated may be considered for award.
- (3) Required Characteristics. The brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristics required.
- (4) Nonrestrictive Use of Brand Name or Equivalent Specifications. Where a brand name or equivalent specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.
- (5) Determination of Equivalents. Any prospective bidder may apply, in writing, for a pre-bid determination of equivalence by the Purchasing Officer. If sufficient information is provided by the prospective bidder, the Purchasing Officer may determine, in writing and prior to the bid opening time, that the proposed product would be equivalent to the brand name used in the solicitation.

- (6) Specifications of Equivalents Required for Bid Submittal. Vendors proposing equivalent products must include in their bid submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purposes only.
- (7) Use of Brand Name Specifications. Since the use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Officer makes a determination that only the identified brand name item will satisfy the City needs.

(n) City Procurement Records. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City in a contract file. All procurement records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules established by the State of Florida and Federal Guidelines. For CDBG related activities that retention period is six years.

(o) Federal Policy Notice:

(1) Patents

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include the following provisions:

- a. Notice to Contractor. The contract shall give notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery or inventions arising out of the contract.
- b. Notice by Contractor. The contract shall require the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

(2) Notice of Federal Public Policy Requirements


- a. Applicability. If the contract is being funded in whole or in part by assistance from any federal agency, the contract is subject to one or more federal public policy requirements such as:
  - (1) equal employment opportunity;
  - (2) Copeland "anti-kickback" Act;
  - (3) Davis Bacon Act;
  - (4) Contract Work Hours and Safety Act;
  - (5) Americans with Disabilities Act; and
  - (6) Other requirements set forth in any contract.
- b. Notice. The Purchasing Officer shall include in the contract all appropriate provisions giving the contractor notice of these requirements. Where applicable, the Purchasing

Officer shall include in the contract provisions the requirement that the contractor give similar notice to all of its subcontractors.


- c. Consistent with the Contract Provisions of 2CFR200.326 and Appendix II of Part 200, federally funded contracts initiated by the City shall address the following:
- (1) Contracts in excess of \$150,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
  - (2) Contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
  - (3) Equal Employment Opportunity (all federally assisted construction contracts).
  - (4) Davis-Bacon Act (for prime construction contracts in excess of \$2,000).
  - (5) Contract Work Hours and Safety Standards Act for construction contracts in excess of \$100,000.
  - (6) Rights to Inventions Made Under a Contract or Agreement.
  - (7) Clean Air Act and Federal Water Pollution Control Act (for contracts in excess of \$150,000).
  - (8) Byrd Anti-Lobbying Amendment (for contracts in excess of \$100,000).
  - (9) Debarment and Suspension.

**SECTION 2.** This Ordinance shall become effective immediately upon adoption.

**CERTIFIED AS TO PASSAGE AND ADOPTION** this 17<sup>th</sup> day of October 2017.

  
\_\_\_\_\_  
Mayor/Commissioner  
City of Lake Wales

ATTEST:

  
\_\_\_\_\_  
City Clerk