

ORDINANCE NO. 2008-09

AN ORDINANCE OF THE TOWN OF LOXAHATTCHEE GROVES, FLORIDA ENACTING A NEW SECTION OF THE TOWN OF LOXAHATTCHEE GROVES CODE OF ORDINANCES ENTITLED "BID PROCEDURES; PUBLIC FUNDS" ADOPTING PROCUREMENT REQUIREMENTS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, Town staff recommends the enactment of a new section of the Town of Loxahatchee Groves Code of Ordinances related to procurement procedures; and

WHEREAS, the Town Council deems it to be in the best interests of the citizens, residents and businesses within the Town of Loxahatchee Groves to enact a new section of the Town of Loxahatchee Groves Code of Ordinances as provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATTCHEE GROVES, FLORIDA THAT:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance upon adoption hereof.

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Section 2. The Town Council of the Town of Loxahatchee Groves hereby enacts a new section of the Code of Ordinances of the Town of Loxahatchee Groves, Florida, entitled "Bid Procedures; Public Funds", to read as follows:

BID PROCEDURES; PUBLIC FUNDS.

A. Definitions.

For the purpose of this Division of the Code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADDENDA or ADDENDUM means written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents or the contract documents.

BUSINESS LOCATION means a permanent office or other site where the vendor operates, conducts, engages in, or carries on all, or a portion of, its business. A post office box shall not be sufficient to constitute a "business location".

CHANGE ORDER means changes, due to unanticipated conditions or developments, made to an executory contract, which do not substantially alter the character of the work contracted for, and which do not vary so substantially from the original specifications as to constitute a new undertaking. Such changes must reasonably and conscientiously be viewed as being in fulfillment of the original scope of the contract rather than as departing therefrom. Further, such changes, when viewed against the background of the work described in the contract and the language used in the specifications, must clearly be directed either to the achievement of a more satisfactory result or the elimination of work not necessary to the satisfactory completion of the contract.

CHIEF PROCUREMENT OFFICER means the Town Manager, or his or her designee, who is responsible for the procurement of

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commodities and services as well as the management and disposal of commodities.

TOWN STANDARD COMMODITIES, refer to those situations where the Town has determined that a particular style, brand, make, or model is the only type that meets the Town's requirements for performance, compatibility or other salient characteristics.

COMMODITIES means personal property, including but not limited to, goods, supplies, apparatus, equipment, material and other forms of tangible personal property.

CONTRACTOR means any person or business entity having a contract with the Town.

COOPERATIVE PURCHASING refers to situations where the Town participates in joint procurement of commodities or services with other public entities within the state, in order to obtain lower prices through greater purchasing volume.

INVITATION FOR BID means a written solicitation for competitive sealed bids with the title, date and hour of the public bid opening designated therein and specifically defining the commodities or services for which bids are sought. The invitation for bid shall be used when the Town is capable of specifically defining the scope of work for which a service is required or when the Town is capable of establishing precise specifications defining the actual commodities required. The invitation for bid shall include instruction to bidders, plans, drawings and specifications, if any, bid form and other required forms and documents to be submitted with the bid.

QUOTATIONS means unsealed telephonic, facsimile or written bids for commodities or services.

REQUEST FOR LETTERS OF INTEREST means a written solicitation for offers with the title, date and hour of the submission deadline designated. A request for letters of interests shall include but is

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not limited to, general information and submission deadline. The town shall engage in competitive negotiations with responsible offerors determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion.

REQUEST FOR PROPOSALS means a written solicitation for competitive sealed proposals with the title, date and hour of the public opening designated. A request for proposals shall include but is not limited to general information, functional or general specifications, a statement of work, proposal instruction and evaluation criteria. All requests for proposals shall state the relative importance of price and any other evaluation criteria. The Town may engage in competitive negotiations with responsible proposers determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and conformance to the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offer.

REQUEST FOR QUALIFICATIONS means a written solicitation for competitive sealed offers with the title, date and hour of the public opening designated. A request for qualifications shall include but is not limited to, general information, functional or general specifications, statement of work, instructions for offer and evaluation criteria. All requests for qualifications shall state the relative importance of the evaluation criteria. The town may engage in competitive negotiations with responsible offerors determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of offers and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offer.

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RESPONSIBLE BIDDER, RESPONSIBLE OFFEROR, RESPONSIBLE PROPOSER means a person or business entity having the capability in all respects to perform fully the contract requirements and sufficient experience, ability, reliability, capacity, facilities, equipment, financial resources and credit to give the Town a reasonable expectation of good faith performance, determined solely within the town's discretion.

RESPONSIVE BIDDER, RESPONSIVE OFFEROR, or RESPONSIVE PROPOSER means a person who has submitted a bid, offer, or proposal that conforms in all material respects to the Invitation for Bid, Request for Letters of Interests, Request for Qualifications, or Request for Proposals, determined solely within the Town's discretion.

SERVICES means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end-product other than reports that are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

SOLE SOURCE means that the commodities or services are available from only one (1) responsible vendor.

SURPLUS PROPERTY means any personal property belonging to the town, that is capable of being used but is in excess of the normal operating requirements of the Town, or which is no longer used or which has become obsolete, worn out or scrapped.

USING AGENCY means any department, agency, commission, bureau or other unit in the town government using commodities or procuring services as provided in this Division of the Town Code of Ordinances.

B. Compliance required.

It shall be unlawful for any town officer or employee to purchase any commodities or services or make any contract within the purview of this division unless there has been compliance with the requirements of

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this division. Any purchase made or contract executed contrary to the provisions hereof shall be null and void, and the Town shall not be bound thereby.

C. Competitive Bidding or Competitive Proposals Required; Exceptions.

(1) A purchase of or contract for commodities or services that is estimated by the Chief Procurement Officer to cost more than twenty-five thousand dollars (\$25,000), shall be based on competitive bids or competitive proposals as determined by the Chief Procurement Officer, except as specifically provided herein.

(2) Only the following situations are exempt from the competitive bid and competitive proposal requirements of this section:

(a) *Emergency purchases.* In urgent cases of compelling emergency that require the immediate purchase of commodities or services, the Town Manager is empowered to waive competitive bidding or competitive proposals and authorize the Chief Procurement Officer to secure by open market procedure any commodities or services, notwithstanding the estimated cost of the commodities or services.

(b) *Professional services.* Contracts for professional services involving peculiar skill, ability, experience or expertise, which are in their nature unique and not subject to competitive bidding or competitive proposals, are exempt from this section of the Code; however, state laws, such as the Consultants' Competitive Negotiation Act of the Florida Statutes, as may be amended from time to time, to the extent applicable, shall be followed.

(c) *Town standard, commodities, single-source and sole-source commodities or services.* Town standard, single-source and sole-source commodities or services are exempt from this section of the Code.

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(d) Disaster preparedness. Contracts for and purchases of commodities or services that are made in contemplation and preparation for and in response to the occurrence of a natural or man-made disaster or civil unrest, where time or availability rather than price is the controlling factor, are exempt from this section of the Code.

(e) Utilization of other governmental agencies' contracts. Commodities or services that are the subject of contracts with the state, its political subdivisions or other governmental entities, including the United States government, are exempt from this section, provided, however, that this subsection shall apply only if the contract expressly permits or if the awarding jurisdiction and/or the vendor agree to allow the Town to purchase therefrom, and if either: (i) the commodities or services are the subject of a price schedule negotiated by the state or federal government or by competitive bid by another governmental agency and not on any preference; or (ii) the price offered for the commodity or service exactly equals or is lower than the governmental contract from vendors awarded such governmental contract. Where an award is made pursuant to this paragraph, the terms and conditions agreeable to the town may be used in lieu of those terms and conditions of the contract with the other governmental agency.

(f) Cooperative purchasing. Cooperative purchasing plans are exempt from this section of the Code.

(g) The following contractual services are not subject to the competitive procurement requirement:

(i) Services involving special skill, ability, training or expertise which are in their nature unique, original or creative.

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(ii) Academic program reviews or lectures or seminars by individuals.

(iii) Health services involving examination, diagnosis, treatment, prevention, medical consultation or administration.

(iv) Artistic services which are original and creative in character and skill in a recognized field of artistic endeavor such as music, dance, drama, painting and sculpture, photography, culinary arts, fashion design and the like.

(v) Performing artists and entertainers hired to provide entertainment for the benefit of the citizens of Loxahatchee Groves and the general public at any Town facility.

(vi) Maintenance service of equipment. When considered to be in the best interest of the Town and recommended by the using department and the services to be performed are by the equipment manufacturer, manufacturer's service representative, or a distributor of the manufacturer's equipment the services may be procured without following the competitive sealed bid process.

(vii) Utilities including but not limited to electric, water and communications.

(viii) Goods and services provided by not-for-profit organizations.

(ix) The foregoing enumeration of services deemed to be exempt from the competitive procurement requirements is not intended to be an exhaustive or exclusive list. The Town Manager or his or her designee may determine if a contractual service must be procured

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through the competitive procurement process, if not expressly indicated herein.

(x) copyrighted materials, except computer software.

(xi) Food, clothing and other promotional items purchased for resale or distribution to the public.

(h) Best interest of the Town. Purchases of, and contracts for, commodities or services are exempt from this section of the Code when the Town Council declares by a four-fifths (4/5) affirmative vote that the process of competitive bidding and competitive proposals is not in the best interest of the Town. The Town Council shall make specific factual findings that support its determination, and such contracts shall not be placed on the Town Council's Consent Agenda.

(3) Any other provision of this section of the Code to the contrary notwithstanding, Town purchasing shall be conducted in accordance with applicable Florida law, including §§ 180.24 and 255.20, Florida Statutes, as may be amended from time to time.

D. Competitive Bidding Procedure.

Procedure. The competitive bidding procedures below shall be followed:

(1) Advertisement for bids required. Notice of the competitive bid shall be advertised at least one (1) time in a newspaper of general circulation within the Town, calling for sealed bids for the work to be done under the proposed contract, at least ten (10) days before the bids are due to be received.

(2) Surety.

(a) Bid deposits. When deemed necessary by the Chief Procurement Officer, bid deposits or sureties shall be prescribed in

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the public notice inviting bids. Unsuccessful bidders shall be entitled to return of such deposit or surety where the Chief Procurement Officer has required same. A successful bidder shall forfeit any deposit or surety required by the Chief Procurement Officer upon failure on its part to enter a contract within fifteen (15) days after the award.

(b) Sureties on performance. For all competitive bids seeking commodities or services in excess of two hundred thousand (\$200,000) dollars the Chief Procurement Officer or appropriate staff person, shall include as a requirement of such advertised bids a performance bond in the total contract amount. The Chief Procurement Office, in his or her discretion, may require such performance bonds for bids seeking commodities or services in an amount of two hundred thousand dollars (\$200,000) or less. The Town Manager shall have the discretion to waive the performance bond requirement in the event of an undue hardship or emergency. Any bonding company used must be listed on the United States Department of the Treasury's Circular 570. Additionally, the bonding company must be rated at least "A," Class VI, by "Best's Key Rating Guide," published by A.M. Best Company, and be authorized to do business in Florida.

(3) Addenda. Written addenda will be issued when changes, clarification or amendments to the invitation for bid are deemed necessary.

(4) Bid opening procedure.

(a) Bids shall be submitted sealed to the Town Clerk and shall be identified as bids on the envelope.

(b) Bids shall be opened in public by the Town Clerk or designee at the time and place stated in the public notice.

(c) A tabulation of all bids received shall be posted for public inspection.

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(d) No late bids shall be accepted or opened, and, if received after the date and time called for in the bid notice, shall be retained unopened by the Town Clerk.

(e) Failure to properly sign bids may invalidate them and they shall not be considered.

(f) The bids opened shall contain a copy to be filed in the Clerk's office.

(g) The Town reserves the right to waive any irregularities in the bids, as determined by the Chief Procurement Officer.

(5) Rejection of bids. The Town Manager and Town Council may reject any bids, parts of all bids or all bids for any one or more commodities or services included in the proposed contract when the public interest will be served thereby. The Chief Procurement Officer shall not accept a bid from a contractor who is in default on the payment of taxes, licenses or other moneys due the Town.

(6) Contracts shall be awarded to the lowest responsive, responsible bidder. In determining the "lowest responsive, responsible bidder," the Chief Procurement Officer shall consider:

(a) The prices contained in the bid.

(b) The ability, capacity and skill of the bidder to perform the contract or provide the service required.

(c) Whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference.

(d) The character, integrity, reputation, judgment, experience and efficiency of the bidder.

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(e) The quality of performance of previous contracts of services, including, but not limited to, Town contracts.

(f) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service.

(g) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.

(h) The quality, availability and adaptability of the commodities, or services to the particular use required.

(i) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

(j) The number and scope of conditions attached to the bid.

(k) The overall cost to the Town.

(l) The best interests of the Town.

(7) Determination and Findings Statement. When the award is not given to the most responsive, responsible bidder, a Determination & Findings statement shall be prepared by the Chief Procurement Officer and filed with the other papers relating to the transaction.

(8) Tie bids.

(a) If the determination of lowest responsive, responsible bidder results in a tie, the contract may be split when it is to the Town's advantage as determined by the Chief Procurement Officer.

(b) If the Chief Procurement Officer determines not to split the bid, the contract shall be awarded by first preference to

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businesses with drug free workplace programs as described in hereinbelow and then by publicly drawing lots.

(9) *Prohibition against subdivision.* No contract of purchase shall be subdivided to avoid the requirements of this section.

(10) *Inspection of bids.* Inspection of the Town's formal bids and proposals shall be conducted in accordance with applicable Florida law, including §119.07 and §120.53, Florida Statutes, as said sections may be amended from time to time.

E. Competitive Negotiations. When the use of competitive bidding is not in the best interest of the Town for a purchase of, or contract for, commodities and/or services estimated to cost in excess of twenty-five thousand dollars (\$25,000), such commodities and/or services may be purchased by competitive negotiations. A request for proposals, or a request for qualifications, or a request for letters of interest shall be issued. Adequate public notice of the solicitation shall be given in the same manner as provided in Section D above. Other procedural provisions applicable to the sealed bid process shall also apply. To assure full understanding of and responsiveness to the solicitation requirements and full understanding of qualified proposals or offers, discussions may be conducted with qualified proposers or offerors who submit responses determined to be reasonably acceptable of being selected for award for the purpose of clarification and to assure full understanding of, and responsiveness to, the solicitation requirements. The respondents shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of responses, and such revisions may be permitted through negotiations prior to award for the purpose of obtaining best and final proposals or offers. The award shall be made to the responsible proposer or offeror whose proposal or offer is determined to be the most advantageous to the Town taking into consideration price and the evaluation factors set forth in the solicitation. No other criteria shall be used in the evaluation. A summary of the basis on which the award is made shall be included in the contract file.

F. Award of Contract.

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(1) Town Council approval.

(a) An initial purchase of, or contract for, commodities or services, in excess of ten thousand dollars (\$10,000), shall require the approval of the Town Council, regardless of whether the competitive bidding or competitive proposal procedures were followed. However, emergency purchases as described in Section C, shall not require advance Town Council approval. In such emergency situations, the Town Manager may approve the purchase or contract, subject to later ratification by the Town Council. Emergency purchases are to be made only when the normal function and operation of the Town would be hampered to such an extent by submittal of a requisition in the usual manner that it may effect the life, health or convenience of citizens.

(b) Purchases exceeding the sum of thirty thousand dollars (\$30,000.00) in the aggregate shall not be purchased from the same person or entity during the course of any fiscal year, unless such purchases are first authorized by the Town Council. The above provision shall not apply to purchases of utilities or to ongoing contracts.

(2) Town Manager approval. A purchase of, or contract for, commodities or services in an amount of twenty-five thousand dollars (\$25,000) or less, shall require the approval of the Town Manager.

G. Town Attorney to review and approve form of purchasing contracts.

The Town Attorney shall review all contracts awarded under this Article of the Code and shall approve said contracts as to form prior to their execution by the appropriate Town officials. Notwithstanding the above, the Town Attorney, in his or her discretion, may approve form contracts bearing a pre-printed Town Attorney approval, provided that the provisions of the form contracts are not modified.

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H. Debarment and suspensions.

(1) Authority and requirement to debar and suspend. After reasonable notice to an actual or prospective contractual party, and after reasonable opportunity to such party to be heard, the Town Manager, after consultation with the Town Attorney, shall have the authority to debar a person or entity for the causes listed below from consideration for award of town contracts. The debarment shall be for a period of not fewer than three years. The Town Manager shall also have the authority to suspend a contractor from consideration for award of town contracts, if there is probable cause for debarment, pending the debarment determination. The authority to debar and suspend contractors shall be exercised in accordance with regulations that shall be issued by the Town Manager.

(2) Causes for debarment or suspension. Causes for debarment or suspension include the following:

(a) Conviction of a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or incident to the performance of such contract or subcontract.

(b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty.

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.

(d) Violation of the Town's contract provisions, which is regarded by the Chief Procurement Officer to be indicative of non-responsibility. Such violation may include failure without good cause to perform in accordance with the terms and conditions of a Town contract or to perform within the time limits provided in the town contract, provided that failure to perform caused by acts

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beyond the control of a party shall not be considered a basis for debarment or suspension.

(e) Debarment or suspension of the person or entity by any federal, state or other governmental entity.

(f) False certification pursuant to paragraph (3) below.

(g) Any other cause judged by the Town Manager to be so serious and compelling as to affect the responsibility of the person or entity performing town contracts.

(3) Debarment and suspension decisions. Subject to the provisions of paragraph (1), the Town Manager shall render a written decision stating the reasons for the debarment or suspension. A copy of the decision shall be provided promptly to the contractual party.

I. Availability of funds.

Except in cases of emergency, Town Manager or designee shall not issue any order for delivery on a contract or any open-market order unless and until the Town Manager, or his designee, certifies that there are unencumbered funds available in the using agency's budget, in excess of all unpaid obligations, to defray the cost of such commodities or services.

J. Open Market Procedure.

A purchase of, or contract for, commodities or services that is estimated by the Chief Procurement Officer to cost one thousand dollars (\$1,000) or less, may be purchased either in the open market, without newspaper advertisement and without observing the procedures prescribed by Section D above, or in accordance with the competitive bidding procedure prescribed by Section D above, as deemed appropriate by the Chief Procurement Officer. However, all such purchases of greater than the estimated cost of one thousand dollars (\$1,000.00) but less than or equal to five thousand dollars (\$5,000.00) shall require at least three (3) quotations by telephone. For purchases of an estimated cost greater than

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five thousand dollars (\$5,000.00) but less than twenty-five thousand dollars shall require at least three (3) quotations in written form.

(1) *Notice inviting quotations.* When using the open market procedure, the Chief Procurement Officer may solicit, or oversee the solicitation of quotations by:

(a) Direct mail requests to prospective vendors;

(b) Telephone;

(c) Public notice;

(d) Facsimile;

(e) Internet

(2) *Recording.* The Chief Procurement Officer shall keep a record of all open market orders and the bids submitted in competition thereon and such records shall also be open to public inspection.

K. Inspection, Testing of Purchased Items or Services.

The Chief Procurement Officer shall inspect, or supervise the inspection of, all deliveries of commodities or services to determine their conformance with the specifications set forth in the order or contract.

(1) *Inspection by using agency.* The Chief Procurement Officer shall have the authority to authorize using agencies having the staff and facilities for adequate inspection to inspect all deliveries made to such using agencies under rules and regulations prescribed by the Chief Procurement Officer.

(2) *Testing.* The Chief Procurement Officer shall have the authority to require chemical and physical test of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests the Chief Procurement Officer shall have the authority to make

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use of laboratory facilities of any agency of the Town government or of any outside laboratory.

L. Disposal Of.

(1) Disposal of property. The disposal of property requires Town Council approval.

M. Change Orders.

(1) Town Manager's authority. Subject to the restrictions contained in paragraph (2) below, the Town Manager is authorized to approve and initial work on the following types of change orders determined in his/her judgment, to be in the public interest, as follows:

(a) All change orders decreasing the cost of the contract to the Town that do not materially alter the character of the work contemplated by the contract.

(b) A change order where the net change increases the cost of the contract to the Town by an amount less than or equal to five percent (5%).

(c) On a unit price contract, a change order consisting of unit quantity increases at the unit price bid, which do not exceed ten percent (10%) of the original unit quantity for each line item.

(2) Notwithstanding the provisions of paragraph (1) above, the Town Manager is not authorized to approve a change order without authorization of the Town Council where the sum of all change orders issued under the contract exceeds five percent (5%) of the original contract amount.

N. Term, Termination, Extension and Renewal of Contracts.

(1) Term.

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(a) Unless otherwise provided by law, a contract for supplies or services may be entered into for any time period deemed to be in the best interests of the Town provided the extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for future fiscal periods shall be subject to the availability of funds.

(b) Price Adjustment. Contracts may be awarded with provisions of upward or downward price adjustments provided this allowance is part of the original bid solicitation and the adjustments are based on a nationally recognized or published index or other criteria acceptable to the Chief Procurement Officer.

(2) Termination. The Town Manager or his/her designee is authorized to terminate any contract entered into by the Town when (s)he determines that a party to the contract has breached or failed to perform one or more of its obligations under the contract. Except in the case of an emergency, where such advance notice is not possible, or where the contract was entered into without Town Council approval, the Town Manager or his/her designee must provide sufficient prior written notice to the Mayor and each Council Member so that they can make any necessary inquiries at the next Town Council meeting. When a contract is entered into by the Town pursuant to Town Council approval and is terminable by the town without cause, only the Town Council is authorized to terminate the contract without cause. If the Mayor or any Town Council Member desires that a contract be terminated without cause, he/she shall notify the Town Manager in writing and request that the item be placed on the next Town Council agenda.

(3) Extensions. The Town Manager or his/her designee is authorized to extend, for operational purposes only and for a maximum of one hundred eighty (180) days, any contract entered into by the Town pursuant to Town Council approval. Any further extensions of such contract require the approval of the Town Council.

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(4) Renewals.

(a) General. When a contract is entered into by the Town pursuant to Town Council approval and provides for one or more renewals by affirmative action of the Town, the Town Manager may approve such renewals only with the approval of the Town Council.

(b) Automatic. When a contract is entered into by the Town pursuant to Town Council approval and provides for one or more automatic renewals unless one party notifies the other of its intent not to renew, only the Town Council is authorized to decide not to renew the contract.

(5) Employment contracts. The provisions of this section shall not apply to the employment contract of the Town Manager.

(6) Application to existing and future contracts. The provisions of this section shall apply to every contract in existence on the effective date of this section and every contract entered into thereafter.

O. Preference to Businesses with Drug-Free Workplace Programs.

(1) The Town hereby adopts by reference §287.087, Florida Statutes, as amended, regarding bidding preferences for businesses with drug-free workplace programs.

(2) Whenever two (2) or more bids which are equal with respect to price, quality and service are received by the town for the procurement of commodities or services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given a preference, provided that the drug-free workplace program complies with §287.087, Florida Statutes, and any other applicable state law. An announcement of this preference may be included in the bid documents.

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P. Non-Discrimination.

Vendor shall not discriminate against any person in its operations, activities or delivery of services. Vendor shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

Q. Non-Collusion.

A Bidder shall not collude, conspire, connive or agree, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Bid in connection with the Work for which the Bid has been submitted; or to refrain from bidding in connection with such work; or have in any manner, directly or indirectly, sought by person to fix the price or prices in the Bid or of any other Bidder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against any other Bidder, or any person interested in the proposed work.

Section 3. It is the intention of the Town Council of the Town of Loxahatchee Groves, Florida that the provisions of this ordinance shall become and be made a part of the Town of Loxahatchee Groves Code of Ordinances. The sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

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Section 4. All ordinances inconsistent or in conflict herewith shall be and are hereby repealed insofar as there is conflict or inconsistency.

Section 5. If any section, sentence, clause, or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

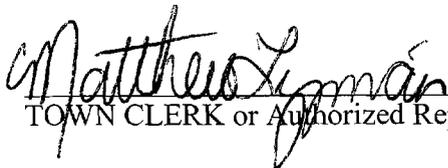
Section 6. This ordinance shall become effective upon its passage and adoption by the Town Council.

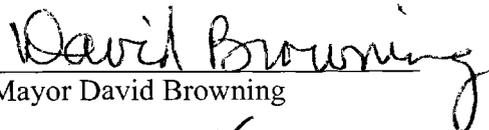
PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA ON THE FIRST READING THIS 18th DAY OF November, 2008.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA ON THE SECOND READING THIS 2nd DAY OF December, 2008.

TOWN OF LOXAHATCHEE GROVES,
FLORIDA

ATTEST:


TOWN CLERK or Authorized Representative


Mayor David Browning


Vice Mayor Herzog

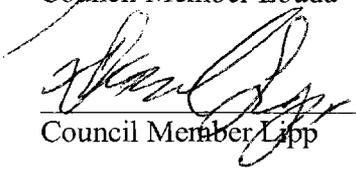

Council Member Autrey

APPROVED AS TO LEGAL FORM:

CODING: Words in ~~strike through~~ type are deletions from existing law;
Words in underlined type are additions.

ORDINANCE NO. 2008-09


Office of the Town Attorney


Council Member Louda

Council Member Lipp

CODING: Words in ~~strike through~~ type are deletions from existing law;
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