

ORDINANCE NO. 2022-06

AN ORDINANCE ADOPTING REGULATIONS RELATED TO THE FINANCIAL ADMINISTRATION, PURCHASING, PROCUREMENT, AND PROPERTY MANAGEMENT OF AND FOR LAKE POINT

WHEREAS Lake Point is authorized and required to adopt regulations related to the management, protection, and disposal of City finances and property under Utah Code §§ 10-8-1 and 10-8-2;

WHEREAS Lake Point is authorized to adopt a financial administration ordinance and purchasing policy to govern purchases and approvals for varying levels of fund expenditures under Utah Code §§ 10-6-122, 10-6-158, and 10-6-159;

WHEREAS Lake Point is not subject to the Utah Procurement Code, though Lake Point may adopt rules and provisions related thereto to the extent deemed appropriate by the City Council, under Utah Code § 63G-6a-107.4;

WHEREAS the Lake Point City Council desires to establish regulations, policies, and procedures to govern the expenditure of funds, the sale of city property, and other matters related to the City's finances and property in order to protect and preserve Lake Point resources for the benefit of current and future residents;

NOW, THEREFORE, BE IT ORDAINED by the Lake Point City Council as follows:

Section 1. Purpose. The purpose of this Ordinance is to establish regulations to govern the purchasing, expenditure, and sale of Lake Point funds and other property.

Section 2. Scope. Purchases shall not be made and encumbrances shall not be incurred for the benefit of the city, except as provided by the Utah Uniform Municipal Fiscal Procedures Act, Title 10, Chapter 6 of the Utah Code, applicable portions of the Utah Procurement Code, Title 63G, Chapter 6a of the Utah Code, the Building Improvements and Public Works Projects Act, Title 11, Chapter 39 of the Utah Code, and this chapter. In the event of a conflict between this chapter and the Utah Procurement Code, the provisions of this chapter shall prevail.

Section 3. Definitions. Unless the context requires otherwise, the terms as used in this chapter, shall have the following meanings:

- a. "Building Improvement" means the construction or repair of a public building or structure that is not an international airport.
- b. "Construction" means the process of building, renovating or demolishing any public structure or building, major developmental work, or landscaping of public real property. It does not include the routine operations, routine repair, or routine maintenance of existing structures, buildings or real property.

- c. "Employment" means the hiring of employees for the city, including part-time, seasonal, full-time, and other employees. Does not include independent contractors or professional services.
- d. "Line Item Change Order" means changes to the quantities of existing line items with unit pricing approved according to the purchasing system.
- e. "Local Bidder" means a firm or individual who regularly maintains a place of business and transacts business in, or maintains an inventory of merchandise for sale in, or is licensed by, or pays business taxes to the City.
- f. "Professional Services" means, but not be limited to, the following: auditing, architecture, banking, insurance, engineering, appraisals, legal services, and other consulting services.
- g. "Public Property" Any item of real or personal property owned by the City.
- h. "Public Works Project" means the construction of a park, recreational facility, pipeline, culvert, dam, canal, or other system for water, sewage, stormwater, or flood control.
- i. "Responsible Bid" means an offer, submitted by a responsible bidder to furnish supplies, equipment or contractual services in conformity with the specifications, delivery terms and conditions, and other requirements included in the invitation for bids.
- j. "Responsible bidder" means a person or firm who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance. The lowest responsible bidder is a bidder who has submitted the lowest bid to furnish supplies or contractual services to the City, and who meets the standards set forth in this definition. The lowest responsible bidder's bid shall comply with the specifications, delivery terms and conditions, and other qualifications and requirements included in the invitation for bids, and shall be accompanied by any bonds required by the City or other applicable law. In determining the lowest responsible bidder, the City shall give primary emphasis to bid price, but may also consider the following items in addition to the actual bid price:
 - i. The ability, capacity, experience and skill of the bidder to perform the service required.
 - ii. Whether the bidder can perform the contract or provide their services within the time specified.
 - iii. The quality and performance of previous services by the bidder, either to the City or another entity.
 - iv. Quality, availability and adaptability of the supplies or contractual services to the particular use required.
 - v. The ability of the bidder to provide future maintenance and service.

- vi. The number and scope of conditions attached to the bid or price quotation.
 - vii. The maintenance history of the product, the parts and service costs of the product, existing inventory, mechanic's expertise, and ease of maintenance.
 - viii. All bidders shall furnish information and data requested by the City that will assist the City in determining whether or not a particular bidder is the "lowest responsible bidder".
- k. "Solicitation" means the procedure used to solicit quotations on price and delivery from various prospective suppliers of supplies, equipment, and contractual services.
 - l. "Solicitation Process" means the process used by the City to solicit and award bids or contracts. Examples of processes used in this chapter include formal competitive bidding, competitive sealed proposals in lieu of bids, and open market procedure.
 - m. "Supplies, Materials and Equipment" means any tangible and all articles of personal property or things which shall be furnished to or used by any City department or by any City employee in the performance of their duties. Supplies, materials and equipment may be collectively referred to as "supplies".

Section 4. Administration. The Council Chair or designee shall function as the chief procurement officer for the City. They shall administer the purchasing system provided by this ordinance, shall perform the duties and have the powers concerning purchasing as follows:

- a. Administer and maintain the purchasing and solicitation system;
- b. Recommend to the City such new or revised purchasing requirements as are deemed desirable and in conformance with other statutory requirements;
- c. Negotiate and recommend execution of contracts for the purchase of supplies, equipment and contractual services;
- d. Seek to obtain as full and open competition as possible on all purchases;
- e. Manage solicitation processes and responses in conformance with this ordinance.

Section 5. Solicitation Processes. The City shall substantially comply with the following guidelines for the specific solicitation process used:

- a. Budget. For all solicitation processes, the chief procurement officer shall establish a budget or estimated cost for the procurement.
- b. Formal Competitive Bidding.
 - i. Notice Inviting Bids Issued

1. Notice includes a general description of the articles to be purchased or the work to be performed, the location where bid plans and specifications may be secured, and the time and place for opening bids.
2. The notice inviting bids shall be:
 - a. Published on the City website, the State bid page website, and/or any other online bid or notice website that is reputable and will be seen by those within the appropriate market or profession; and
 - b. Delivered to all known responsible prospective bidders, including those whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list.
3. State Bid List. If there is a quotation for the item desired to be purchased on the State bid list, the City may invite prospective bidders to bid against the price quoted in the State bid list.

ii. Bid Procedure

1. Sealed bids shall be submitted as designated in the notice with the statement "Bid for (item or project)" on the envelope/subject.
2. Bids shall be opened in public at the time and place stated in the notice.
3. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening.
4. Bids submitted to the City shall be evaluated on the basis of compliance with specifications and other relevant criteria.

iii. Bid Award. Bids shall be awarded or rejected as set forth in Section 7

c. Competitive Sealed Proposals in Lieu of Bids/Request for Proposal (RFP)

i. Notice of an RFP shall be:

1. Published on the City website, the State bid page website, and/or any other online bid or notice website that is reputable and will be seen by those within the appropriate market or profession; and
2. Delivered to all known responsible prospective bidders, including those whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list; and

3. Published in other locations, such as trade journals, if deemed necessary to reaching additional responsible prospective bidders.
 - ii. The request for proposals shall state the factors and criteria, including price, that will be used to evaluate the proposals.
 - iii. Opening of Proposals
 1. Proposals shall be opened so as to avoid disclosure of contents to competing bidders during the process of evaluation and negotiation.
 2. A register of proposals shall be maintained by the City for thirty (30) days after the contract award.
 - iv. Revision of Proposals
 1. As provided in the request for proposals, discussions may be conducted with responsible bidders who submit proposals determined to be reasonably susceptible of being selected for award. The purpose of the discussion is to assure full understanding of and responsiveness to the solicitation requirements.
 2. Bidders shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions to bids may be permitted at the City's discretion, after submissions and prior to award for the purpose of correcting errors and clarifying information needed to evaluate the proposal.
 3. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing bidders.
 - v. Award of Proposal. Award shall be made to the responsible bidder whose proposal is determined to be the most advantageous to the City, taking into consideration price, the evaluation factors set forth in the request for proposals, and other criteria set forth herein. The City may further negotiate terms in order to comply with budgets, specific services/products sought, and other matters beneficial to the City. The award shall be in accordance with Section 7
- d. Open Market Procedure
 - i. Purchases Supplies may be purchased through supplier accounts the City has opened with various vendors. Employees are encouraged to use sales events for those common supplies sold through various public vendors.
 - ii. Open market purchases shall, whenever possible, be based on at least three (3) quotes or bids, even if informal. Quotes or bids shall be solicited from prospective vendors by written or oral request.

Section 6. Choice of Solicitation Process. Except as otherwise provided in this Chapter or by provisions of State or Federal law, purchases of supplies, services, or equipment shall follow one of the bid or proposal processes outlined below for the appropriate dollar amount. In cases where more than one alternative is listed as acceptable for a given dollar amount, any of the listed alternatives shall be acceptable. The City shall not incur any liability for choosing one alternative over another. The choices of solicitation process are as follows:

- a. Building Improvements and Public Works Projects that exceed the bid limit established in Utah Code § 11-39-101 shall follow the bid and other procedures set forth in Title 11, Chapter 39 of the Utah Code.
- b. Purchases of supplies or services having an estimated value in excess of twenty-five thousand dollars (\$25,000.00) shall be approved by the City Council pursuant to one of the following procedures:
 - i. State bid.
 - ii. Formal competitive bidding, without the requirement of publishing notice.
 - iii. Competitive sealed proposals in lieu of bids/RFP.
- c. Purchases of supplies or services having an estimated value of greater than five thousand dollars (\$5,000.00) but less than or equal to twenty-five thousand dollars (\$25,000.00) shall be approved by the City Council pursuant to one of the following procedures:
 - i. State bid.
 - ii. Formal competitive bidding, without the requirement of publishing notice.
 - iii. Competitive sealed proposals in lieu of bids.
 - iv. Open market procedure.
- d. Whenever the supplies or services have an estimated value of \$5,000.00 or less, all solicitation processes and procedures may be dispensed with.

Section 7. Awarding Of Bids And RFPs

- a. Lowest Responsible Bidder. Except as otherwise allowed or required, the City shall award the contract or bid to the lowest responsible bidder. For RFPs, the lowest responsible bidder shall consist of the proposal that provides the best value and is the most advantageous to the City.
- b. Rejection of Bids. The City Council, chief procurement officer, or others authorized to accept and award bids may reject any and all bids presented, and may resolicit for bids as set forth in this Ordinance. The City may proceed to do any work itself after rejecting all bids, by following the procedures set forth in Utah Code § 11-39-103 if applicable.

- c. Negotiation of Bids. Where a bid exceeds available funds and time or economic considerations preclude re-solicitation of work or purchase of a reduced scope or quantity, the chief procurement officer or designee may negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible bidder, in order to bring the low bid within the amount of available funds.
- d. Tie Bids. If two (2) or more of the bids received are for the same total amount or list price, quality and service being equal, the chief procurement officer or designee may negotiate with the bidders and obtain the best bid possible and/or give a preference to a local bidder.
- e. Local Bids. The chief procurement officer or designee may specify in the solicitation notice that preference will be given to a response from a local provider, on such terms as the officer or designee determines.
- f. Single Bids. The chief procurement officer or designee may require a price or cost analysis if only one bid is received. The bidder may be required to furnish a detailed cost proposal, and the bid award shall be subject to subsequent negotiation.
- g. Bonds. Before entering a contract, the City shall have authority to require performance, payment, or other bonds or insurance in such amounts as deemed necessary to protect the interests of the City. The types and amounts of the bonds or insurance to be required shall be described in the notice inviting bids.

Section 8. Contract Considerations

- a. Change orders. Change orders which increase the contract price in an amount of the lesser of \$10,000.00 or 10% of the contract amount may be approved by the chief procurement officer or designee, as long as the overall project budget is not exceeded by more than the lesser of \$10,000.00 or 10% of the contract price, and provided further that the sum of all change orders does not increase the contract price by more than the lesser of \$10,000.00 or 10% of the contract amount. Line item change orders may be approved by the chief procurement officer or designee as long as the overall project budget is not exceeded by more than the lesser of \$10,000.00 or 10% of the contract price.
- b. Multi-Year Contracts. Multi-year contracts longer than five years shall comply with Utah Code § 63G-6A-1204 Multiyear Contracts.

Section 9. Exceptions To Solicitation Requirements. Unless otherwise required by State or Federal law, the solicitation process requirements set forth in this Ordinance do not apply in the following situations:

- a. Employment. Employment decisions, employment payments (including payroll and benefit payments), and the hiring of all employees is not subject to any solicitation process, provided that the City Council may authorize or require a competitive process, by job posting or other similar methods, where desirable to have a competitive process for selecting an employee, and all employment payments shall be established through the City's budget process.

- b. Professional service contracts
 - i. Professional services shall include, but not be limited to, the following: auditing, architecture, banking, insurance, engineering, appraisals, legal services, and other consulting services. Professional service contracts shall be awarded based on professional qualifications, service ability, cost of service, and other criteria deemed important by the City
 - ii. A professional services contract for the annual fiscal year financial audit shall only be awarded by the City Council. This contract may be awarded for multiple years. The performance of the auditing firm may be reviewed periodically to determine whether to continue the contract or put it back out to bid.
- c. Contracts Not Suited to Competitive Bidding. Contracts, which by their nature are not suited to award by competitive bidding, shall not be subject to the competitive solicitation requirements of Section 3.08.040. These contracts include, but are not necessarily limited to:
 - i. Contracts for items which may only be purchased from a single or sole source.
 - ii. Contracts for additions to and repairs and maintenance of equipment owned by the City which may be more efficiently added to, repaired or maintained by a particular person or firm.
 - iii. Contracts for equipment that, by reason of the training of City personnel or the inventory of replacement parts maintained by the City, is more compatible with the existing equipment owned by the City.
- d. Auction, Closeout, Bankruptcy Sales. If the chief procurement officer or designee determines that supplies, materials or equipment can be purchased at any public auction, closeout sale, bankruptcy sale or other similar sale, and if the chief procurement officer or designee finds that a purchase at any such auction or sale will be made at a cost below the market cost in the county, a contract or contracts may be let, or the purchase made, without complying with the competitive bidding requirements of this Chapter.
- e. Exchanges. Exchanges of supplies, material or equipment between the City and any other public agency which are not by sale or auction shall be by mutual agreement of the respective public agencies.
- f. Projects Performed by City Employees. City employees may be used to complete City projects, provided that the City complies with State statutory requirements governing contracts for building improvements and public works projects.
- g. State Bid List. The City may purchase supplies from the vendor who has submitted the lowest bid price for such items to the State of Utah Purchasing Office at the quoted price, without any solicitation or price quotation or invitation to bid. For such

purposes, the quoted price shall be deemed to be the lowest price available for such items and the City need not follow any other bidding requirements.

- h. Utah Correctional Industries Division. Goods and services produced by the Utah Correctional Industries Division may be purchased from the Utah Correctional Industries Division without following any of the bidding requirements set forth herein.
- i. Emergency Purchases. Notwithstanding any other section of this Chapter, competitive bidding may be suspended in the event of an emergency when supplies, services, and/or contracts are needed immediately in order to respond to the emergency. In order to suspend competitive bidding, the emergency must require immediate action and/or response in order to protect the life, health, or safety of persons or property, or, in the event of an improvement bond forfeiture, the need to complete the bonded improvements in a certain time frame, given all factors, including weather considerations.
- j. Contract Extension. Extension of contract with a firm currently providing service if City Council believes an extension rather than a solicitation process is in the best interest of the City.

Section 10. Interlocal Agreements In Letting Of Contracts For Commodities Or Services

- a. The City shall have the power to enter into joint purchase agreements with any or all other public agencies within the state for the purchase of any commodity or service, whenever it is determined by the City Council to be in the best interest of the City.

Section 11. Hearing and Notice for Sale of Significant Parcel of Real Property

- a. Lake Point shall not sell a significant parcel of real property except after reasonable notice is provided of a public hearing related to the disposal and said public hearing is held to allow for public comment on the proposed disposition, as required by Utah Code § 10-8-2.
- b. "Reasonable notice" for purposes of this section shall mean a notice that describes the property being disposed of and the date, time and place of the public hearing that is published at least fourteen (14) days in advance of the public hearing in at least the following places:
 - i. the city offices; and
 - ii. the Utah Public Notice Website and city website.
- c. A "significant parcel of real property" shall constitute any parcel or lot of real property that is capable of development under applicable zoning or that is equal to or greater than one tenth (1/10) of an acre.

Section 12. Sales, Leases, and Disposal of Any Property

- a. In selling, leasing, or otherwise encumbering any property, real or personal, that is reasonably estimated to have value, the City Council shall approve the method or methods by which the property will be sold. For property with an expected value of at least \$100,000, the City Council shall have an appraisal performed of the property prior to approving any transaction related thereto.
- b. The City Council may seek bids or proposals for the property any of the solicitation processes described in this ordinance, may enter into private negotiations, or use other, reasonable methods to establish a sale, rental, or lease price and other terms and consideration.
- c. The City Council shall ensure that, whatever method or process is used to sell, lease, or otherwise encumber property, the City receives at least fair market value in exchange for the rights and property so transferred.

Section 13. The City Council shall examine and consider all claims for payments or damages submitted to the City in accordance with governing law.

Section 14. This Ordinance shall take effect immediately upon its adoption and publication in accordance with law.

PASSED, APPROVED, AND ADOPTED on the 21st day of December, 2022

Lake Point

By 
Chair

ATTEST:


City Recorder

SEAL

Voting:

Daniel Crawford	Yea <u>/</u>	Nay <u> </u>	Absent <u> </u>
Doyle Garrard	Yea <u>/</u>	Nay <u> </u>	Absent <u> </u>
Jonathan Garrard	Yea <u>/</u>	Nay <u> </u>	Absent <u> </u>
Kathleen VonHatten	Yea <u>/</u>	Nay <u> </u>	Absent <u> </u>
Ryan Zumwalt	Yea <u>/</u>	Nay <u> </u>	Absent <u> </u>