

AN ORDINANCE AMENDING CHAPTER 37: FINANCE AND REVENUE OF THE CITY OF FORT WAYNE, INDIANA CODE OF ORDINANCES BY APPROVING A NEW SUBCHAPTER: THE USE OF COMPETITIVE SEALED PROPOSALS AND OTHER PROCESSES FOR PROCUREMENT OF GOODS AND SERVICES.

WHEREAS, the City of Fort Wayne's procurement process is based upon the principle of open and fair competition; and

WHEREAS, open and fair competition saves the City and its taxpayers **money**, improves vendor performance, curbs fraud, provides transparency, provides accountability for results, and instills confidence in the City and the public about the integrity and cost effectiveness of public procurement; and

WHEREAS, competition ensures all vendors desiring to conduct business with the City a fair and reasonable opportunity to do so; and

WHEREAS, Indiana Code 5-16-11.1 neither requires nor prohibits a competitive process for procurement of professional services and; and

WHEREAS, it is understood that the scope of professional service projects may change during the process of negotiation, making negotiation with multiple professionals ideal when essential.

NOW, THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE;

SECTION 1. That CHAPTER 37: FINANCE AND REVENUE of the City of Fort Wayne, Indiana Code of Ordinances is amended as follows:

REPEAL: Section 37.17 **APPROVAL OR RATIFICATION
REQUIRED.**

REPEAL: Section 37.18 **EMERGENCY PURCHASES.**

REPEAL: Section 37.19 **COUNCIL APPROVAL REQUIRED FOR
PURCHASES AND/OR LEASES OF
REAL ESTATE.**

REPEAL: Section 37.20 **EXCEPTION.**

ADD: New Subchapter:

**THE USE OF COMPETITIVE SEALED PROPOSALS AND OTHER
PROCESSES FOR PROCUREMENT OF GOODS AND SERVICES.**

β 37.17 DEFINITIONS.

The definitions in this Section apply throughout this ordinance:

(A) “Accountant services” means any professional service involving licensed accountants as defined in Indiana Code 25-2.1-3;

(B) “Architectural services” means any professional service involved in the practice of architecture as defined in Indiana Code 25-4-1-17 and includes “architect” or “architecture”;

(C) “Legal services” means any professional service involved or associated with the licensed practice of law as defined in the Indiana Rules of Court;

(D) “Engineering services” means any professional service as defined in Indiana Code 25-31-1-2 and includes “engineer” and “engineering”;

(E) “Surveying services” means any professional service as defined in Indiana Code 32-25-21.5 and includes “surveyor” and “surveying”;

(F) “Emergency” means any relevant threat to public health, welfare or safety which requires immediate response from the City;

(G) “Firm” means any individual, firm, partnership, corporation, consultants or other legal entity permitted by law to practice the profession of accounting, architecture, engineering or law and provide the services defined in subsections (A) through (E) of this section;

(H) “On-Call” means those services that are routine in nature, or services that have similar scopes of work that occur in a year that may be pre-selected through pre-qualification and easily accessed by City;

(I) “Professional Services” means any and all Accounting, Architectural, Attorney, Surveying, Engineering, and Consulting services that may be procured by the City;

(J) “Project” means any capital improvement project, study, plan, survey, or new or existing program activity of the City that requires architectural or engineering services or other Professional Services;

(K) “Statement of Qualification” means written responses to the factors requested in the Request for Qualification (RFQ);

(L) “City Selection Committee” means the committee comprised of employees of the City with experience relevant to a Project;

(M) “Qualifications Based Selection” means the process that selects professional services on the basis of qualifications and competence initially and then negotiates price with firms in descending order of their ranking until a price is agreed on or negotiations are terminated.

(N) “Competitive Sealed Proposals” means the process that selects Professional Services on the basis of a request for sealed proposals from qualified firms. After the initial sealed proposals are evaluated by the City Selection Committee then negotiations are conducted with all offerors deemed reasonably acceptable and qualified for award of contract. After negotiations, final written proposals from the offerors are evaluated by the

City Selection Committee and a recommendation made as to which proposal is the most advantageous to the City considering all factors. The contract shall be sent to the City Council for final approval.

(O) Project Manager- means the person designated by the City as its appointed agent for the negotiation and finalization of a particular project and/or contract.

(P) Request for Qualification (RFQ)-means a written request for submission of qualifications regarding factors relevant to a specific project;

(Q) Request for Proposal (RFP)-means a procurement process entailing obtaining request for proposals from multiple offerors wherein selection is based on a combination of qualifications and price with points assigned for various factors and costs; a process that may be used in general management consulting for a one-time project. RFP can also refer to a step in an overall procurement process.

(R) Pre-Qualification with Rates Fixed-means a procurement process in which qualifications are established beforehand resulting in a pre-qualified list of vendors with rates fixed, followed with selection of one of the pre-qualified vendors in a separate process after a project is identified; a process that may be used for repetitive predictable projects based on general types such as legal services and limited engineering services such as surveying, drafting and inspection.

(S) Sole Source-means a procurement process utilizing non-competitive selection based on qualifications with a negotiated scope and fee or hourly rate used for such processes as emergencies, lobbying, legal services and unique projects.

(T) Consultant Services—means service by a firm that provides expertise in a specific field of knowledge, including insurance consultants and other

consultants whose fee is embedded in the prices the City pays for the product or service.

β 37.18 APPROVAL OR RATIFICATION REQUIRED.

- (A) Whenever the City, including any city-owned or operated utilities:
 - (1) executes a contract which exceeds \$100,000 per year for the purpose of providing goods and/or services to the city or any city-owned or operated utility, then, with the exception of those contracts governed by division (B) herein, all such purchases and/or leases for real property or such contracts shall be entered into with the prior approval or subsequent ratification by the Common Council of the city by ordinance or resolution duly passed by the Common Council and approved by the Mayor. All such purchases and/or leases and such contracts entered into without such prior approval or subsequent ratification shall be null and void.

- (B) Notwithstanding division (A), prior approval or subsequent ratification by Common Council shall not be required for contracts entered into by the City (including any city-owned or operated utilities) for any contracts which:
 - (1) are construction contracts with a total value of \$150,000 or less that have been processed through and reviewed by the Board of Works in accord with all state and local requirements, have been subject to a public meeting and have been put out to public bid (in accord with the state statutes) and awarded to the lowest bidder.
 - (2) are for commodities that have been competitively bid according to state statute and awarded to the lowest bidder.

β 37.19 EFFECT OF ADOPTION.

- (A) The City shall utilize one of the selection processes for selection of Professional Services if the estimated cost of Professional Services for

the contract is greater than \$100,000. One project may not be divided into multiple separate statements of work in order to avoid the \$100,000 threshold unless there is a separate RFP for each individual project segment. Payments greater than \$100,000 in any given year to a particular Professional Services Firm will be strictly scrutinized by City Council for compliance with this ordinance.

The City Selection Committee shall use the Competitive Sealed Proposals process for selection of Professional Services except for the following occurrences:

(1) The City Selection Committee shall use a Qualifications Based Selection process for selection of Professional Services if that process satisfies a condition of receiving federal and/or state funds.

(2) If the regulations of a federal or state department or agency require a procurement process that is different in order that financial aid can be granted, then the City's procurement of Professional Services is exempt from the requirements of this ordinance.

(3) In the event of an emergency, the City's procurement of Professional Services is exempt from the requirements of this ordinance.

(4) The City Selection Committee may use the RFP, RFQ, Pre-Qualification with Rates Fixed or Sole Source procurement processes in the types of project examples listed in the Definitions Section or in any project where Competitive Sealed Proposal method is not possible.

(5) If the City purchases goods and/or services from a state or federal contract.

§ 37.20 PROCEDURES FOR PROPOSED PROJECT REQUIRING PROFESSIONAL SERVICES WHEN COMPETITIVE SEALED PROPOSALS METHOD OR QBS METHOD UTILIZED.

(A) When a project requiring Professional Services is proposed by the City, the City Selection Committee shall:

- (1) Transmit a request for Statements of Qualifications to firms which appear on the City's vendor list; and
- (2) Give adequate public notice of the proposed project, which may include posting on the City's website, a 3rd party internet site used by the City, or in a newspaper advertisement, requesting firms to submit a Statement of Qualifications for the proposed project. This notice must appear for at least two (2) weeks with one additional week allowed for response before receipt of firm qualifications. As indicated in IC 5-16-11.1-4, the public notice must include: (a) the location of the project; (b) a general description of the project; (c) the general criteria to be used in selecting professional services firms for the project; (d) the place where any additional project description or specifications are on file; (e) The hours of business of the public agency; and (f) the last date for accepting statements of qualifications from interested parties.

(B) The City Selection Committee may establish a list of pre-qualified firms on an annual basis to use on an on-call basis or for projects that do not meet the cost threshold requirements of Section 2. If the firms are prequalified for the particular project specified, the City may move directly to Request for Proposals as indicated in Subsection 4(C).

β 37.21 CRITERIA FOR EVALUATION OF INTERESTED FIRM.

The City Selection Committee shall individually evaluate those Firms submitting Statements of Qualification for a proposed project according to the selection criteria requested in the RFQ and past performances with the City.

The City Selection Committee shall establish a reasonable weight (points) associated with each of these criteria. Office location may be considered as a criteria to be evaluated. The weighting must be sent out with each RFQ so every firm will understand the basis for ratings.

The City Selection Committee shall compile the Statement of Qualifications submitted for a proposed project, determine which Firms have qualifications and past performance history that is reasonably acceptable and qualified for award of the project, and determine an initial ranking of most qualified Firms by reference to the selection criteria identified in Statement of Qualifications; interviews also may be conducted as part of the selection process.

The City Selection Committee will then proceed to the Competitive Sealed Proposals process for most projects or to the Qualifications Based Selection process unless exceptions listed in Section 2 apply.

(A) Competitive Sealed Proposals. For those projects for which Professional Services are to be selected by the Competitive Sealed Proposals process the following procedure shall be followed:

(1) Issuance of RFP. A RFP will be issued to those firms whose qualifications were deemed acceptable by the City Selection Committee. The RFP shall include desired specifications, all contractual terms, and conditions applicable to the procurement. The RFP shall state the relative importance of price and other evaluation factors. Specific numerical weighting is required. Evaluation factors may include but are not limited to categories such as price, quality, experience, expertise, qualifications, method of approach, responsiveness, financial strength, any other factors the City Selection Committee considers pertinent, etc. The RFP shall include the last date for accepting Competitive Sealed Proposals from interested parties. The RFP shall include the time and place where the proposals will be opened publicly. No public notice need be given of this invitation to submit Competitive Sealed Proposals because such notice was previously given and this is a unique Professional Services hiring process explicitly dictated by this Ordinance.

(2) Receipt of proposals. Proposals shall be opened publicly in the presence of one or more witnesses at the time and place designated in the RFP. The name of each offeror shall be read. All other information

contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the negotiation process. Proposals shall be open for public inspection only after contract award. A proposal, modification, or withdrawal is late if it is received at the location designated in the RFP after the time and date set for proposal opening. A late proposal, late modification, or late withdrawal shall be rejected, unless the proposal, modification or withdrawal would have been timely received but for the action or inaction of City personnel and is received before contract award. Prior to the scheduled opening, the responsible department may open an offer to identify the offeror. If this occurs, the staff member shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The offer shall be secured and retained for public opening.

(3) Clarifications of offers. The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the RFP or offer shall not be made by clarification. The Project Manager may request clarifications from any offeror(s) at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award. Any clarifications shall be retained in the procurement file.

(4) Determination if not susceptible for award. A Project Manager may determine at any time during the evaluation period and before award that an offer is not susceptible for award. The Project Manager shall notify the offeror in writing of the final determination that the offer is not susceptible for award unless the Project Manager determines that notification to the offeror would compromise the City's ability to negotiate with other offerors. A determination of non-susceptibility shall be based on, but not limited to, the following:

- (a) A legal offer has not been submitted due to the lack of an authorized signature on the designated offer form; or

(b) The offer is not within the competitive range in comparison to other offers based on the scoring of evaluation criteria as set forth in the solicitation.

(c) The offeror has submitted an incomplete proposal including, but not limited to, failure to provide requested documents and/or attend mandatory meeting(s)

(5) Negotiations with responsible offerors. Negotiations must be conducted with all offerors determined to be reasonably susceptible and qualified for award. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the offeror shall confirm the negotiations in writing. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing. The City may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, further define and refine scope, performance, or terms, to achieve the best value for the City based on the requirements and the evaluation factors set forth in the solicitation. Once negotiations are initiated, an offeror may withdraw an offer at any time before the final proposal revision due date and time by submitting a written request to the Project Manager. The Project Manager shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.

(6) Final Proposal Revisions/Best and Final Offer. The Project Manager shall request written final proposal revisions from any offeror with whom negotiations have been conducted. Final proposal revisions shall be requested only once, unless the City Project Manager makes a written determination that it is advantageous to the City to conduct further negotiations or change the City's requirements. The Project Manager shall include in the written request:

(a) The date, time, and place for submission of final proposal revisions; and

(b) A statement that if offerors do not submit a written notice of withdrawal or a written final proposal revision, their last revision shall be accepted as their final proposal revision.

(B) Qualifications Based Selection. For those projects for which Professional Services are to be selected by the “Qualifications Based Selection” process, the following procedure shall be followed.

- (1) The City Selection Committee may conduct discussions, check references, and require interviews with firms deemed to be the most qualified according to Statement of Qualifications. Information regarding the cost of Professional Services for the proposed project shall not be a factor in the evaluations of firms until negotiations are begun in accordance with subsection 4 B (4).
- (2) The City Selection Committee shall select on the basis of the evaluations in this section, at least three (3) firms that are judged to be the most qualified and rank them accordingly. If fewer than three (3) firms are judged to be qualified, then those firms shall be ranked in like-manner and the City Selection Committee shall provide a detailed explanation as to why other firms were not qualified or not available.
- (3) On Call Service.
 - (a) Projects requiring services previously identified in Section 1 will be sent to the pre-qualified list of firms proposing to provide professional services for proposed projects.
 - (b) Firms shall then be ranked in accordance with the process in this section with negotiations to follow with the highest ranked firm in accordance with subsection 4B (4) or with the highest ranked firms through a RFP process.
- (4) Negotiation of Contract.
 - (a) Based on the ranking developed in the Statement of Qualifications. The City Selection Committee shall contact the highest ranked firm and attempt to negotiate professional

services contract for a fair and reasonable value that takes the following into account:

- (1) The estimated value of the services needed;
- (2) The scope and complexity of the proposed project;
- (3) The business risk anticipated;
- (4) The professional nature of the services required;
- (5) Any other criteria that the City Selection Committee deems relevant

(b) If the City Selection Committee is unable to negotiate a satisfactory contract with the highest ranked firm, negotiations with that firm shall be terminated. The City Selection Committee shall then negotiate with the next firm in the rankings, continuing this procedure until an agreement is reached or the list of ranked firms is exhausted.

(c) if negotiations with all of the ranked firms fail to result in a satisfactory contract, the City Selection Committee shall re-evaluate the Professional Services involved in the proposed project and proceed to comply with this ordinance until a contract is successfully negotiated.

(d) On-call professional services will be obtained using the same negotiation process with a pre-qualified group of firms unless a RFP process is followed.

(e) The City shall at all times retain the right to terminate negotiations and/or cancel the procurement of professional services.

(f) No firm shall be deemed to have been conferred by the City an interest in a contract or arrangement for the provision of professional services by participating in the processes provided in this ordinance.

β 37.22 CONTRACT APPROVAL.

City Council will approve or reject the contract of the Project Manager to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the other evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. After contract award, the proposals shall be open for public inspection except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions but the City is still subject to public records law. Material portions of all finalists' proposals shall be attached to the Ordinance.

β 37.23 REPORTING REQUIREMENTS.

One (1) year after effective date of passage, Council shall receive a formal report from the Administration regarding the impact of the process requirement of this Ordinance.

SECTION 2. That the following sections of Chapter 37: FINANCE AND REVENUE are amended as follows:

~~β37.18~~ becomes **β37.24 EMERGENCY PURCHASES.**

~~β37.19~~ becomes **β37.25 COUNCIL APPROVAL REQUIRED FOR PURCHASES AND/OR LEASES OF REAL ESTATE.**

~~β37.20~~ becomes **β37.26 EXCEPTION.**

~~β37.21~~ becomes **β37.27 COUNCIL APPROVAL REQUIRED FOR PURCHASE AND/OR CONTRACTS FOR INSURANCE POLICES.**

~~β37.22~~ becomes **β37.28 PREFERENCE GIVEN TO INDIANA BUSINESSES BY AND THROUGH THE DEPARTMENT OF PURCHASING OF THE CITY OF FORT WAYNE, INDIANA**

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

Approved As To Form And Legality

Carol Helton, City Attorney