

12 CHAPTER 43: PROCUREMENT

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43-101 Purpose

The purpose of this Ordinance is to provide for the fair and equitable treatment of all persons involved in public purchasing by the City, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

43-102 Eligibility

Every new contractor, and any subcontractor that contractor hires, must register with the Employment Eligibility Verification (EEV)/Basic Pilot Program, or E-Verify, in order to be eligible to perform work for the City. Contracts between the City and contractors, and between the contractors and their subcontractors, must be accompanied by sworn affidavits attesting to affiant's registration with E-Verify and compliance with E-Verify's citizenship requirements.

43-103 State Income Tax Withholdings

The City will withhold six percent (6%) of any contractor or subcontractor's compensation for state income tax if the contractor or subcontractor fails to provide a taxpayer identification number, fails to provide a correct taxpayer identification number, or provides a taxpayer identification number issued for nonresident aliens.

43-104 Competitive Sealed Bidding

1. Conditions for Use. All contracts of the City shall be awarded by competitive sealed bidding except as otherwise provided in Sections 43-105 (Competitive Sealed Proposals), 43-106 (Contracting for Designated Professional Services), 43-107 (Small Purchases), 43-108 (Sole Source Procurement), and 43-109 (Emergency Procurements).

2. Invitation for Bids. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.

3. Public Notice. Adequate public notice of the invitation for bids shall be given a reasonable time, not less than fifteen (15) calendar days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening. The public notice shall state the place, date, and time of bid opening.

4. Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the City Clerk deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.

5. Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Ordinance. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

6. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

- (a) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

(b) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the City Clerk or Director of Utilities.

7. Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the appropriate fiscal officer, and such bid does not exceed such funds by more than five (5%) percent, the City Clerk or Director of Utilities is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids.

8. Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

43-105 Competitive Sealed Proposals

1. Conditions for Use. When the City Clerk, Police Chief and/or Director of Utilities determine that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by use of the competitive sealed proposals method.

2. Discussion with Responsible Offerors and Revisions to Proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals 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 proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.

3. Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the 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.

43-106 Contracting for Designated Professional Services

Professional services to the extent provided by state law are exempt from the provisions of this purchasing policy. The term "professional services" includes services rendered by accountants, engineers, architects, physicians and lawyers as defined by the laws of the State of Georgia.

43-107 Small Purchases

1. General. Any contract not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) may be made in accordance with the small purchase procedures authorized in this Section except, up to \$40,000 when authorized by the Director of Utilities, the City Clerk, or the Chief of the Police Department. Contract requirements shall not be artificially divided so as to constitute a small purchase under this Section.

2. Small Purchases Over \$500.00. Insofar as it is practical for small purchases in excess of \$500.00, no less than three businesses shall be solicited to submit quotations. Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record by use of a uniform bid form as approved by the Mayor.

3. Small Purchases Under \$500.00. The City Clerk shall adopt operational procedures for making small purchases of \$500.00 or less. Such operational procedures shall provide for obtaining adequate and reasonable competition for the supply, service, or construction being purchased. Further, such operational procedures shall properly account for the funds expended.

43-108 Sole Source Procurement

A contract may be awarded without competition when the City Clerk, Police Chief and/or Director of Utilities determine in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The City Clerk shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identifications number of each contract file.

43-109 Emergency Procurements

Notwithstanding any other provisions of this Ordinance, the City Clerk, Director of Utilities, or Chief of Police may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis

for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification number of the contract file. This provision shall not abrogate the City's requirements as specified in the Official Code of Georgia.

43-110 Cancellation of Invitations for Bids or Request for Proposals

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the City. The reasons therefore shall be made part of the contract file. Each solicitation issued by the City shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the City. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

43-111 Repealer

All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

43-112 Severability

It is hereby declared that if any phrase, sentence, or paragraph hereof shall be found or declared unconstitutional or invalid by a court of competent jurisdiction, the remaining phrases, sentences and paragraphs hereof shall remain in full force and effect as if enacted without the phrase, sentence, or paragraph declared unconstitutional or invalid.

¹ *Ordinance to Amend Chapter 43 of the City of Lawrenceville's 2005 General Code of Ordinances was adopted on December 1, 2008.*

² *Ordinance to Amend Chapter 43 of the City of Lawrenceville's 2005 General Code of Ordinances was adopted on May 3, 2010.*