

ORDINANCE NO. 2016-18

ORDINANCE

**AN ORDINANCE TO AMEND ARTICLE IX OF CHAPTER 2 OF THE
CODE OF ORDINANCES OF THE CITY OF LAWRENCEVILLE, GEORGIA,
RELATING TO PROCUREMENT**

The City Council of the City of Lawrenceville, Georgia hereby ordains that Chapter 2, Article IX of the Code of the City of Lawrenceville, Georgia is hereby amended by deleting it in its entirety and replacing the deleted language with the following:

ARTICLE IX. - PROCUREMENT³¹

Footnotes:

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State Law reference— Contracts by political subdivision concerning procurement of federal equipment, supplies or property, O.C.G.A., § 50-16-81; local political subdivisions purchased through state, O.C.G.A., § 50-5-100 et seq.; local authorities' preference for products produced in Georgia, O.C.G.A. § 50-5-61.

DIVISION 1. - GENERALLY

Sec. 2-251. - Purpose.

The purpose of the City of Lawrenceville Procurement Ordinance is to:

- (a) Manage the procurement process in accordance with the law;
- (b) Spend tax payers' money wisely, efficiently, and fairly;
- (c) Meet the needs of City departments through continuous improvement of purchasing systems and procedures;
- (d) Establish a comprehensive plan for the purchase of goods and services for the City and its departments;
- (e) Protect against fraud and favoritism by providing fair and equitable treatment of all persons and entities involved in public purchasing;
- (f) Ensure that all segments of the business community are encouraged to contract with the City for goods and services;
- (g) Maximize the purchasing value of public funds in procurement, to the fullest extent practicable, while giving consideration to the lifetime cost as well as other factors needed to determine the best overall interest to the City;

- (h) Provide safeguards for the maintenance of a procurement system of quality and integrity; and
- (i) Provide guidelines for purchasing equipment, materials, supplies, and services for the operational requirements of the City of Lawrenceville that insure competitive and unbiased selection of vendors.

Code 2005, § 43-101)

Sec. 2-252. - Definitions

Absolute Value: The numerical value of an acquisition or change order request without regard to its sign.

Best & Final Offer: In competitive negotiation, the final proposal submitted after negotiations are completed that contains the vendor's most favorable terms for price and services or products to be delivered.

Bid: Submission of information from a bidder that describes the bidder's commodities or services, and any other information necessary to respond to the specifications and other requirements set forth in an Invitation to Bid.

Brand Name or Equal Specification: A specification limited to one or more items by manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet City requirements, and which provides for the submission of equivalent products.

Brand Name Specifications: A specification limited to one or more items by manufacturers' names or catalogue numbers.

Business: Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Change Order: A written order signed by a person authorized to act on behalf of the City directing the contractor to make changes that the "Changes" clause of the contract authorizes.

Commodity: A discrete and distinct item of tangible personal property, including, without limitation, any such item which is intended to become an integrated part of another item of tangible personal property or of any improvement to real property.

Confidential Information: Any information which is available to an employee only because of the employee's status as an employee of the City and is not a matter of public knowledge or available to the public on request.

Contract: Any agreement, purchase order, lease, or other document which creates or is intended to create binding reciprocal obligations including, without limitation, any document evidencing a bid or proposal award which has been accepted by the bidder.

Contractor: Any person who is party to a contract.

Cooperative Purchase: An arrangement whereby two or more public procurement units purchased from the same supplier using a single Invitation to Bid or Request for Proposal.

Invitation to Bid: All information and documentation disseminated by the City to solicit bids.

Offeror: Any person who has submitted a bid or proposal to the City or otherwise offered to form a contract with the City.

Person: Any individual or legal entity.

Professional Service: A service consisting in material part of advice, evaluation, planning, design, or other effort involving the exercise of judgement, discretion, and knowledge, including, without limitation, a service provided by a person whose profession is licensed or regulated by the state or federal government.

Proposal: Submission of information from a proposer (including a consultant) which states how that proposer intends to fulfill the specifications and other requirements described in a Request for Proposal.

Qualified Products List: An approved list of supplies, services or construction items described by model or catalogue numbers, which prior to competitive solicitation, the City has determined will meet the applicable specification requirements.

Request for Proposals: All information and documentation disseminated by the City to solicit proposals.

Responsible Bidder: A person who has the capability in all respects to perform fully the contract requirements, and the experience, reliability, capacity, facilities, equipment and credit which will assure good faith performance.

Responsive Bidder: A person who has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation to bids or request for proposals.

Services: The furnishing of labor, time or effort by a contractor that is not intended to accomplish the delivery of a specified tangible product other than reports which are merely incidental to the required performance, including, without limitation, a professional or consulting service.

Intangible: Incapable of being perceived by the senses.

Sec. 2-253. - Eligibility.

Every new contractor, and any subcontractor that a 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 the affiant's registration with E-Verify and compliance with E-Verify's citizenship requirements.

(Code 2005, § 43-102)

State Law reference— Political subdivisions required to use E-Verify, O.C.G.A. § 13-10-91.

Sec. 2-254. - State income tax withholding.

The City will withhold six percent 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 nonresidents.

(Code 2005, § 43-103)

Sec. 2-255. - Competitive sealed bidding.

- (a) Conditions for use. All contracts of the City over \$100,000.00 shall be awarded by competitive sealed bidding except as otherwise provided in sections 2-256 through 2-263.
- (b) Invitation for bids. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.
- (c) Public notice. Adequate public notice of the invitation for bids shall be given a reasonable time, not less than 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 the bid opening. The public notice shall state the place, date, and time of the bid opening.
- (d) Receipt of bid. No written bid shall be eligible for consideration by the City unless it is placed in a sealed envelope or package and actually received by the Purchasing Department by the date and time specified in the Invitation to Bid. All bids shall be stamped or annotated with the date and time of receipt and secured until the designated opening time. A bid delivered late shall under no circumstances be eligible for consideration by the City.
- (e) 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 together with the name of each bidder shall be recorded. The record shall be open to public inspection in accordance with state law.
- (f) Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this article. 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 unless it is set forth in the invitation for bids.
- (g) 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 notice received in the office designated in the invitation for bids prior to the time set for the bid opening. 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:
 - (1) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - (2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. The bidder shall give notice in writing of his claim of right to withdraw his bid due to an error within two business days after the conclusion of the bid opening procedure.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 Purchasing Manager.
- (h) 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 exceeds available funds as certified by the appropriate fiscal officer, and such bid does not exceed such funds by more than five percent, the Purchasing Manager 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.

- (i) **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.
- (j) **Tie bids.** In the event two (2) responsive bids are tied for the lowest price and the other terms and conditions of the two (2) bids are substantially the same, the bid shall be awarded to the local firm if only one of the bidders has a current City business license and office located within the boundaries of the City of Lawrenceville. If both or neither of the tied bidders are local firms, the Purchasing staff shall request the firms' best and final offers, and the award shall be to the lowest bid. If both firms have the same price after best and final offer, then the bid award shall be made to the winner of a coin toss by Purchasing staff in a public session. Bidders will be invited to attend and one or more witnesses may be present.
- (k) **Approval by Council.** All contracts exceeding \$25,000.00 shall be approved by Council. Once the contract has been approved by the City Council, all expenditures made in accordance with the terms of the contract are approved and shall require no further action by the City Council.

(Code 2005, § 43-104; Ord. No. 2013-15, 8-5-2013)

Sec. 2-256. - Competitive sealed proposals.

- (a) **Conditions for use.** When the Purchasing Manager determines that the use of competitive sealed bidding or other procurement methods is either not practicable or not advantageous to the City, a contract may be entered into by use of the competitive sealed proposals method.
- (b) **Public Notice.** Public notice shall be advertised as required by Georgia law. The public notice shall contain a general description of the item or service to be purchased, shall state the location where documents may be obtained and the date, time and place of proposal receipt. Notice of any required bonding and insurance shall be included in the public notice.
- (c) **Receipt.** No written proposal shall be eligible for consideration by the City unless it is placed in a sealed envelope or package and actually received by the Purchasing Department by the date and time specified in the Request for Proposals. All proposals shall be stamped or annotated with the date and time of receipt and secured until the designated opening time. A proposal delivered late shall under no circumstances be eligible for consideration by the City.
- (d) **Opening proposals.** Proposals shall be opened publicly in the presence of one or more witnesses on the date and at the time and place designated in the Request for Proposals. The name of each Proposer shall be announced.
- (e) **Proprietary Information.** Proprietary Information: Information submitted by a Proposer that is specifically marked "proprietary" shall not be disclosed outside of the Purchasing Department without prior notification to the Proposer. The City of Lawrenceville is required to comply with the Georgia Open Records Act, O.C.G.A. §50-18-70 et seq. and therefore may not be able to protect information submitted in any response. Entire proposals may not be deemed "proprietary".
- (f) **Evaluation.** Each proposal shall be evaluated to determine whether it is responsive to the specifications and other terms and conditions contained in the Request for Proposals. With the approval of the Purchasing Associate named in the solicitation, the evaluating team may communicate with each proposer to clarify and amplify each Proposer's proposal. No information concerning any other Proposer's proposal shall be communicated in any way to the Proposer. Additional information may be requested of Proposers. The Purchasing Department will initiate such requests.
- (g) **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 ensure 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.

- (h) *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.
- (i) *Approval by Council.* All contracts exceeding \$25,000.00 shall be approved by the Council. Once the contract has been approved by the City Council, all expenditures made in accordance with the terms of the contract are approved and shall require no further action by the City Council.

Sec. 2-257. - Informal purchases.

- (a) *Conditions for Use.* Those purchases anticipated to be under \$100,000.00 that do not justify the administrative time and expense for the conduct of competitive sealed bids or proposals. The Purchasing Manager is authorized to establish the methods and procedures to be used in handling informal purchases such as, but not limited to, telephone requests, e-mail requests, or informal written requests. Unless otherwise specifically provided, such purchases will be obtained competitively through informal written solicitations.
- (b) *General.* Procurements that involve amounts less than \$100,000.00 do not require a formal sealed bid/proposal process. However, the processes used for this type of procurement will include as much competition as is consistent with the anticipated cost of the procurement and the best interest of the City. The formal sealed bid/proposal process may still be exercised with an informal purchase if deemed in the best interest of the City.
- (c) *Prohibition of Improper Use.* Purchases may not be artificially divided as to constitute an informal purchase, thereby circumventing the dollar limit requirement for competitive sealed bids/proposals.
- (d) *Approval by Council.* Regardless of procurement method, all purchases exceeding \$25,000.00 shall be approved by Council. Once the purchase has been approved by the City Council, all expenditures made in accordance with the terms of the purchase are approved and shall require no further action by the City Council.
- (e) *Approval by City Manager.* Regardless of procurement method, all purchases between \$5,000.00 and \$25,000.00 shall be approved by the City Manager.
- (f) *Approval by Purchasing Manager.* Regardless of procurement method, all purchases between \$1,000.00 and \$5,000.00 shall be approved by the Purchasing Manager.

(Code 2005, § 43-105)

Sec. 2-258. - Exemptions

- (a) Professional services, are exempt from the provisions of this purchasing policy. The term "professional services" shall mean services rendered by accountants, engineers, architects, physicians, lawyers and other professions as defined by the laws of the State of Georgia.

- (b) Real property, real estate brokerage and appraising, abstract of titles for real property, title insurance for real property and other related costs of acquisition of real property.
- (c) Dues and membership fees.
- (d) Public works construction contracts to the extent governed by O.C.G.A. §36-91-1 et seq.
- (e) Advertisements and legal advertisements that are required by law to publicly advertise meetings or actions in the legal organ.
- (f) Intangible repairs that are cost prohibitive to seek competitive quotations.
- (g) Subscriptions.
- (h) Utilities, where there is no reasonable basis for competitive procurement, for example electric power, water, and sewerage.
- (i) Training, travel, lodging or meal expense covered by other City policies and regulations.

(Code 2005, § 43-106)

Sec. 2-259. - Small purchases.

- (a) Generally. Any purchase may be made or invoice paid as an exception to this procurement ordinance that does not exceed \$25,000.00 in accordance with the small purchase procedures, provided that the following requirements are met:
 - (1) The purchase is approved in writing by the City Manager or his/her designee.
 - (2) A purchase or invoice cannot be divided into two or more parts to qualify for this exception to the procurement ordinance.
 - (3) All small purchases shall be itemized and reported for approval on the consent agenda of the City Council meeting following the expenditure.
- (b) Small purchases between 1,000.00 and \$5,000.00. Insofar as it is practical for small purchases between \$1,000.00 and \$5,000.00, no less than three businesses shall be solicited to submit quotations unless adequate source supply is not available. 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.
- (c) Small purchases of \$1,000.00 or less. The City Manager shall adopt operational procedures for making small purchases of \$1,000.00 or less. Further, such operational procedures shall require the preparation and maintenance of written records adequate to document the competition obtained, properly account for the funds expended, and facilitate an audit of the small purchases made.

(Code 2005, § 43-107; Ord. No. 2013-15, 8-5-2013)

Sec. 2-260. - Sole source procurement.

Based upon evidence that a particular commodity or service may be obtained from only one source and no similar commodity or service available from a different source will adequately meet an acquiring department's requirements and specifications, the City Manager may decide that the commodity or service be purchased sole source or by brand name based upon supporting documentation from the requesting department. Supporting documentation will be reviewed by the Purchasing Department and findings will be

presented to the City Manager. Requesting department shall present any sole source procurement over \$25,000.00 for approval by the Mayor and Council in an officially called public meeting. 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 items procured under each contract, and the identification number of each contract file.

(Code 2005, § 43-108)

Sec. 2-261. - Emergency procurements.

Notwithstanding any other provisions of this article, the City Manager may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, safety, or to the soundness and integrity of public property or to the delivery of essential services and where the adverse effects of such emergency may worsen materially with the passage of time 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 and shall be submitted for approval to the Council as a consent agenda item at the next meeting following the emergency procurement. 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 items procured under the contract, and the identification number of the contract file.

Sec. 2-262. – Cooperative purchases.

The City may participate in a cooperative purchase for commodities, supplies and services when determined that it is in the best interest of the City. The sponsoring entity, whether federal, state, local, or non-profit must have performed a competitive procurement process and entered into a contract that stipulates allowance for other governmental entities to purchase from the supplier at the same price and under the same terms and conditions as extended to itself. If such arrangement has not been made a part of the contract, written permission from the sponsoring entity and the awarded supplier must be obtained. Documentation to substantiate this decision will be maintained by the Purchasing Department.

Sec. 2-263. – Governmental and Affiliated Entity purchases.

The City may purchase services and incidental commodities from other federal, state or local governments, associations and non-profit organizations when determined to be in the best interest of the City. Documentation to substantiate this decision will be maintained by the Purchasing Division.

Sec. 2-264. – Change Orders and Contract Modifications.

- (a) General provisions. Except as hereinafter provided, any change order or other modification of a contract term shall be approved by the City Council.
- (b) City Manager Authority. The City Manager or his/her designee shall have authority to approve all change orders to purchase orders and contracts up to an absolute value of 20% of the original contract, provided the total change order amount is \$25,000.00 or less.
- (c) Purchasing Manager Authority. The Purchasing Manager shall have authority to approve all change orders to purchase orders and contracts up to an absolute value of \$5,000.00.

Sec. 2-265. – Standardization Committee.

A Standardization Committee shall be established and be comprised of members (selected from user departments by the City Manager, Deputy City Manager and the Purchasing Manager) who shall serve for a two year staggered term. The Committee shall meet periodically to review standardization of commodities, review products for a Qualified Products List, and review requests for exception to establish standards. The committee will report to the City Manager to make recommendations on commodities to be presented to City Council for approval. The maximum length of a standardization shall be seven (7) years.

(Code 2005, § 43-109)

Sec. 2-266. - 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 therefor 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 procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

(Code 2005, § 1-110)

Sec. 2-267. - Vehicle purchases.

Competitive solicitations shall be obtained for all vehicle purchases. However, if the purchase of a specific type of vehicle is included as an approved line item in the capital outlay annual budget and the bid price for said vehicle does not exceed the budgeted amount, the City Manager shall be authorized to purchase said vehicle without seeking additional or specific approval of the City Council. For the purposes of this section, the term "vehicle" means automobiles, motorcycles, heavy equipment, heavy machinery, and similar items.

(Ord. No. 2013-25, 12-4-2013)

Secs. 2-268—2-277. - Reserved.

DIVISION 2. - PROCUREMENT FOR FEDERAL AID HIGHWAY PROGRAM FUNDING PROJECTS

Sec. 2-278. - Purpose.

The purpose of this chapter is to set forth the City of Lawrenceville Policy for Competitive Negotiation Qualifications-based Selection for Projects Using Federal Aid Highway Program (FAHP) Funding.

(Ord. of 12-17-2014(02), § 43-201)

Sec. 2-279. - General policy.

- (a) Competitive negotiation. Except as provided in sections 2-280 and 2-281, the City shall use the competitive negotiation method for the procurement of engineering and design related services when FAHP funds are involved in the contract (as specified in 23 USC 112(b)(2)(A)). The solicitation, evaluation, ranking, selection, and negotiation shall comply with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40 USC 1101—1104, commonly referred to as the Brooks Act.
- (b) Application of competitive negotiation method procedures. In accordance with the requirements of the Brooks Act, the following procedures shall apply to the competitive negotiation procurement method:
 - (1) Solicitation. The solicitation process shall be by public announcement, public advertisement, or any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract. Procurement procedures may involve a single step process with issuance of a request for proposal (RFP) to all interested consultants or a multiphase process with issuance of a request for statements or letters of interest or qualifications (RFQ) whereby responding consultants are ranked based on qualifications and request for proposals are then provided to three or more of the most highly qualified consultants. Minimum qualifications of consultants to perform services under general work categories or areas of expertise may also be assessed through a prequalification process whereby statements of qualifications are submitted on an annual basis. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under an RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.
 - (2) Request for Proposal (RFP). The RFP shall provide all information and requirements necessary for interested consultants to provide a response to the RFP and compete for the solicited services. The RFP shall:
 - a. Provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered. The scope of work should detail the purpose and description of the project, services to be performed, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications, and policies;
 - b. Identify the requirements for any discussions that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals;
 - c. Identify evaluation factors including their relative weight of importance in accordance with subsection (c) of this section;
 - d. Specify the contract type and method(s) of payment to be utilized in accordance with section 172.9;
 - e. Identify any special provisions or contract requirements associated with the solicited services;
 - f. Require that submission of any requested cost proposals or elements of cost be in a concealed format and separate from technical/qualifications proposals as these shall not be considered in the evaluation, ranking, and selection phase; and
 - g. Provide a schedule of key dates for the procurement process and establish a submittal deadline for responses to the RFP which provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal, which except in unusual circumstances shall be not less than 14 days from the date of issuance of the RFP.
 - (3) Evaluation factors.
 - a. Criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services must assess the demonstrated competence and qualifications for the type of professional services solicited. These qualifications-based factors may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts

or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance.

- b. Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
- c. In-State or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement which attests to the minimum qualifications and competence of a consultant to perform the solicited services.
- d. The following non-qualifications based evaluation criteria are permitted under the specified conditions and provided the combined total of these criteria do not exceed a nominal value of ten percent of the total evaluation criteria to maintain the integrity of a qualifications-based selection:
 - 1. A local presence may be used as a nominal evaluation factor where appropriate. This criterion shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.
 - 2. The participation of qualified and certified Disadvantaged Business Enterprise (DBE) sub-consultants may be used as a nominal evaluation criterion where appropriate in accordance with 49 CFR Part 26 and the City of Lawrenceville's FHWA-approved DBE program.

(4) Evaluation, ranking, and selection.

- a. Consultant proposals shall be evaluated by the City based on the criteria established and published within the public solicitation.
- b. While the contract will be with the prime consultant, proposal evaluations shall consider the qualifications of the prime consultant and any sub-consultants identified within the proposal with respect to the scope of work and established criteria.
- c. Following submission and evaluation of proposals, the City shall conduct interviews or other types of discussions determined three of the most highly qualified consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFP. Discussion requirements shall be specified within the RFP and should be based on the size and complexity of the project as defined in City written policies and procedures (as specified in section 172.5(c)). Discussions may be written, by telephone, video conference, or by oral presentation/interview. Discussions following proposal submission are not required provided proposals contain sufficient information for evaluation of technical approach and qualifications to perform the specific project, task, or service with respect to established criteria.
- d. From the proposal evaluation and any subsequent discussions which have been conducted, the City shall rank, in order of preference, at least three consultants determined most highly qualified to perform the solicited services based on the established and published criteria.
- e. Notification must be provided to responding consultants of the final ranking of the three most highly qualified consultants.

- f. The City shall retain acceptable documentation of the solicitation, proposal, evaluation, and selection of the consultant accordance with the provisions of 49 CFR 18.42.

(5) Negotiation.

- a. Independent estimate. Prior to receipt or review of the most highly qualified consultant's cost proposal, the City shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation and ensuring the consultant services are obtained at a fair and reasonable cost.
- b. Elements of contract costs (e.g., indirect cost rates, direct salary or wage rates, fixed fee, and other direct costs) shall be established separately in accordance with section 172.11.
- c. If concealed cost proposals were submitted in conjunction with technical/qualifications proposals, only the cost proposal of the consultant with which negotiations are initiated may be considered. Concealed cost proposals of consultants with which negotiations are not initiated should be returned to the respective consultant due to the confidential nature of this data (as specified in 23 USC 112(b)(2)(E)).
- d. The City shall retain documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract in accordance with the provisions of 49 CFR 18.42. This documentation shall include the consultant cost certification and documentation supporting the acceptance of the indirect cost rate to be applied to the contract (as specified in section 172.11(c)).

(Ord. of 12-17-2014(02), § 43-202)

Sec. 2-280. - Small purchases.

The small purchase method involves procurement of engineering and design related services where an adequate number of qualified sources are reviewed and the total contract costs do not exceed an established simplified acquisition threshold. The City may use the State's small purchase procedures which reflect applicable State laws and regulations for the procurement of engineering and design related services provided the total contract costs do not exceed the Federal simplified acquisition threshold (as specified in 48 CFR 2.101). When a lower threshold for use of small purchase procedures is established in State law, regulation, or policy, the lower threshold shall apply to the use of FAHP funds. The following additional requirements shall apply to the small purchase procurement method:

- (1) The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures.
- (2) A minimum of three consultants are required to satisfy the adequate number of qualified sources reviewed.
- (3) Contract costs may be negotiated in accordance with State small purchase procedures; however, the allow ability of costs shall be determined in accordance with the Federal cost principles.
- (4) The full amount of any contract modification or amendment that would cause the total contract amount to exceed the established simplified acquisition threshold would be ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

(Ord. of 12-17-2014(02), § 43-203)

Sec. 2-281. - Noncompetitive.

The noncompetitive method involves procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procurement methods. The following requirements shall apply to the noncompetitive procurement method:

- (1) The City may use their own noncompetitive procedures which reflect applicable State and local laws and regulations and conform to applicable Federal requirements.
- (2) The City shall establish a process to determine when noncompetitive procedures will be used and shall submit justification to, and receive approval from, the FHWA before using this form of contracting.
- (3) Circumstances under which a contract may be awarded by noncompetitive procedures are limited to the following:
 - a. The service is available only from a single source;
 - b. There is an emergency which will not permit the time necessary to conduct competitive negotiations; or
 - c. After solicitation of a number of sources, competition is determined to be inadequate.
- (4) Contract costs may be negotiated in accordance with the City noncompetitive procedures; however, the allow ability of costs shall be determined in accordance with the Federal cost principles.

(Ord. of 12-17-2014(02), § 43-204)

Sec. 2-282. - Additional procurement requirements.

- (a) Common grant rule.
 - (1) The City must comply with procurement requirements established in State and local laws, regulations, policies, and procedures which are not addressed by or in conflict with applicable Federal laws and regulations (as specified in 49 CFR 18.36).
 - (2) When State and local procurement laws, regulations, policies, or procedures are in conflict with applicable Federal laws and regulations, the City of Lawrenceville must comply with Federal requirements to be eligible for Federal-aid reimbursement of the associated costs of the services incurred following FHWA authorization (as specified in 49 CFR 18.4).
- (b) Disadvantaged Business Enterprise (DBE) program.
 - (1) The City shall give consideration to DBE consultants in the procurement of engineering and design related service contracts subject to 23 USC 112(b)(2) in accordance with 49 CFR 26. When DBE program participation goals cannot be met through race-neutral measures, additional DBE participation on engineering and design related services contracts may be achieved in accordance with the City of Lawrenceville's FHWA approved DBE program through either:
 - a. Use of an evaluation criterion in the qualifications-based selection of consultants (as specified in section 172.7(a)(1)(iii)(D)); or
 - b. Establishment of a contract participation goal.
 - (2) The use of quotas or exclusive set-asides for DBE consultants is prohibited (as specified in 49 CFR 26.43).
- (c) Suspension and debarment. The City must verify suspension and debarment actions and eligibility status of consultants and sub-consultants prior to entering into an agreement or contract in accordance with 49 CFR 18.35 and 2 CFR 180.

(Ord. of 12-17-2014(02))

Secs. 2-283—2-298. - Reserved.

IT IS SO ORDAINED that except as specifically amended herein, all other sections and provisions of Chapter 2 shall remain unchanged and in full force and effect.

IT IS SO ORDAINED this 1st day of August, 2016.



Judy Jordan Johnson, Mayor

Attest:



Karen Pierce, City Clerk