

Sec. 2-80.1. Contract procurement standards.

(a)

Contract procurements, generally.

(1)

All procurements of professional service contracts shall comply with all applicable federal, state and local laws, rules and regulations. To the extent this chapter may conflict with any valid superseding federal or state law, it shall automatically conform to such federal or state law.

(2)

All procurements of public works construction and other non-professional service contracts shall comply with all applicable federal, state and local laws, rules and regulations. To this extent this chapter may conflict with any valid superseding federal or state law, it shall automatically conform to such federal or state law.

(3)

Unless otherwise required by federal law, rule, and/or regulation, all city contract procurements shall comply with applicable the state competitive bid and public works laws.

(4)

Unless otherwise required by a federal law, rule or regulation, competitive bidding shall not be required to procure the following:

a.

Contracts for securing services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants, public accountants, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part.

b.

Contracts for fiscal or financial advice or services.

c.

The selection of paying agents and trustees for any security issued by the city.

d.

Professional services contracts for codification and publication of the laws and ordinances of the city.

e.

The purchase of insurance.

(5)

Unless otherwise required by a federal law, rule or regulation, the city council may adopt a resolution authorizing and awarding a professional service contract as described in subsection (a)(3) in its discretion and without utilization of a formal or informal competitive bid process.

(6)

Notwithstanding the foregoing, the city may, in its discretion, issue a request for proposal ("RFP") or request for statement of qualifications ("RFQ") to introduce a competitive element into the selection of any professional service. Generally, the RFP or RFQ may require a statement of experience and qualifications, references, a price/hourly rate quote (if applicable), and any other requirement deemed appropriate by the City that does not conflict with federal, state or local law; provided, however, that the final form of any lawful RFP or RFQ shall be in the discretion of the City and may or may not include any of the abovementioned elements, and may include additional elements.

(b)

Procurement of contracts subject to 24 CFR § 85.36 requirements.

(1)

City procurement procedures to conform to federal law. The city will use its own procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in 24 CFR § 85.36.

a.

Contract administration system. The city will maintain a contract administration system through the establishment of a city representative for each contract. The city representative will monitor contract performance and consult with the office of the city attorney as required to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

b.

Standards of conduct. Elected officials, staff or agents of the city are prohibited from personally benefitting from procurements under this section. No employee, officer or agent of the city shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest as defined in 24 CFR § 85.36, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, or any member of his immediate family, his partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm

selected for award. The city's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. To the extent permitted by state (Ala. Code tit. 36, [ch. 25](#)) or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the officers or employees of the city, or agents, or by contractors or their agents.

c.

Unnecessary/duplicative items. Prior to award, the city shall perform a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

d.

Responsible contractors. The city will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The city will require contractors to executed a "disbarment and suspension statement" certifying/verifying that the contractor is not suspended or disbarred or otherwise excluded under 2 CFR § 408.220 of the government-wide non-procurement, disbursement and suspension list.

e.

Records. The city will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

f.

Protest procedures. Protests made under this section shall be presented in writing to the designated city representative within three (3) days. Further protest may be handled and resolved pursuant to the same procedure established in Ala. Code § 41-16-61. To wit, any taxpayer of the area within the jurisdiction of the city and any bona fide unsuccessful bidder on a particular contract shall be empowered

to bring a civil action in the appropriate court to enjoin execution of any contract entered into in violation of the provisions of this section. The city shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust this remedy before pursuing a protest with the federal agency.

(2)

Competition. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 24 CFR § 85.36.

a.

Situations restrictive of competition. Some of the situations considered to be restrictive of competition, and therefore prohibited, include but are not limited to:

1.

Placing unreasonable requirements on firms in order for them to qualify to do business;

2.

Requiring unnecessary experience and excessive bonding;

3.

Noncompetitive pricing practices between firms or between affiliated companies;

4.

Noncompetitive awards to consultants that are on retainer contracts;

5.

Organizational conflicts of interest;

6.

Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement; and,

7.

Any arbitrary action in the procurement process.

b.

Geographical preferences. The city will not impose in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate

number of qualified firms, given the nature and size of the project, to compete for the contract. Nothing in this section preempts state licensing laws.

c.

Written selection procedures. The city will establish written selection procedures for procurement transactions in the form of a request for proposal ("RFP"), request for statement of qualifications ("RFQ"), sealed bid, or other pre-established procurement document for each procurement transaction. In the event that procedures are not established in the procurement document, written proposals will be rated by a pre-selected panel of qualified city employees. The panel will agree upon a rating system prior to review of proposals that will consist of either a numerical grading system or a pass/fail grading system, or a combination of the two (2). These procedures will ensure that all solicitations:

1.

Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and,

2.

Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

d.

Prequalification. If the city chooses to prequalify contractors, then the city will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free

competition. Also, the city will not preclude potential bidders from qualifying during the solicitation period.

(3)

Methods of procurement. Any method of procurement under this section shall comply with the requirements of 24 CFR § 85.36 and any other applicable federal, state or local law, rule or regulation, whichever requirement is stricter.

a.

Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services. To the extent the state competitive bid and/or public works laws establish stricter standards for procurement by small purchase procedures, the city shall apply the stricter state law standards. Generally, all expenditure of funds of whatever nature for labor, service, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars (\$15,000.00) or more must be competitively bid pursuant to the requirements of the state bid law.

b.

Procurement by sealed bids (formal advertising). Bids shall be publicly solicited and a firm-fixed-price contract (lump sum or unit price) shall be awarded to the responsible, responsive bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method shall be the preferred method for procuring construction. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bid. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond. All bids will be publicly opened at the time and place prescribed in the invitation for bids. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason. To the extent the state competitive bid and/or public works laws establish stricter standards for procurement by sealed bids (formal advertising), the

city shall apply the stricter state law standards. Before entering into any contact for a public works involving an amount in excess of fifty thousand dollars (\$50,000.00), the city shall advertise for sealed bids. In order for sealed bidding to be feasible, the following conditions must be present:

1.
A complete, adequate, and realistic specification or purchase description is available;
2.
Two (2) or more responsible bidders are willing and able to compete effectively and for the business; and
3.
The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

b.

Procurement by competitive proposals. If this method is used, the following requirements apply:

1.
Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
2.
Proposals will be solicited from an adequate number of qualified sources;
3.
The method for conducting technical evaluations of the proposals received and for selecting awardees will be established in the request for proposal ("RFP"), request for statement of qualifications ("RFQ"), or other pre-established procurement document for each procurement transaction. In the event that procedures are not established in the procurement document, written proposals will be rated by a pre-selected panel of qualified city employees. The panel will agree upon a rating system prior to review of proposals that will consist of either a numerical grading system or a pass/fail grading system, or a combination of the two (2);
- 4.

Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and,

5.

In its discretion, the city may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

6.

To the extent the state competitive bid and/or public works laws establish stricter standards for procurement by competitive proposals, the city shall apply the stricter state law standards.

c.

Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one (1) source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one (1) of the following circumstances applies:

1.

The item is available only from a single source;

2.

The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

3.

The awarding agency authorizes noncompetitive proposals;
or

4.

After solicitation of a number of sources, competition is determined inadequate.

Cost analysis (i.e. verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits) is required.

(4)

Contracting with small and minority firms, women's business enterprise and labor surplus area firms. The city will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include: placing qualified small and minority businesses and women's business enterprises on solicitation lists; assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises; establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; using the services and assistance of the small business administration and the minority business development agency of the department of commerce; and, requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.

(5)

Contract cost and price. The city shall perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the city must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price. The city will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles. The city may

reference its own cost principles that comply with the applicable federal cost principles. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(6)

Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the following minimum requirements shall apply:

a.

The city shall require a bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b.

The city shall require a performance bond on the part of the contractor for one hundred (100) percent of the contract price. A "performance bond" is one (1) executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c.

The city shall require a payment bond on the part of the contractor for one hundred (100) percent of the contract price. A "payment bond" is one (1) executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

d.

To the extent the state competitive bid and/or public works laws establish stricter standards for bonding requirements, the city shall apply the stricter state law standards.

(7)

Contract provisions. Contracts procured pursuant to this section shall contain the following contract provisions:

a.

Violation or breach of contract terms. If the contractor is adjudged as bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the agreement, or is assessed

liquidated damages as set forth herein, then the city may, without prejudice to any of its other rights or remedies and after giving the contractor and his surety, if any, seven (7) days' written notice, during which period the contractor fails to cure the violation, terminate the employment of the contractor. In such case, the contractor shall not be entitled to receive any further payment from the city.

b.

Termination for cause and for convenience. The city reserves the right with or without cause to terminate the agreement by giving written notice to contractor of such termination at least fifteen (15) days before the effective date thereof. In the event of termination, contractor shall cease performing any work pursuant to the agreement and be entitled to compensation for services rendered through the effective date of termination.

c.

Access to records. The city, any subgrantee, the federal grantor agency, the comptroller general of the united states, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.

d.

Retention of records. Contractor is required to retain all records as required by applicable federal law for three (3) years after the city or any or subgrantee makes final payments and all other pending matters are closed.

e.

Compliance, generally. For contracts in excess of one hundred thousand dollars (\$100,000.00), contractors are required to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

f.

Energy efficiency. Contractors are required to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

g.

Value engineering. For architectural/engineering (A/E) contracts, contractor is encouraged to develop, prepare, and submit to the city value engineering change proposals (VECP's) voluntarily. Value engineering change proposal (VECP) means a proposal that requires a change to this, the current contract, to implement, and results in reducing the overall projected cost to the city without impairing essential functions or characteristics.

h.

Equal employment opportunity. Contractors shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (Applies to all construction contracts awarded in excess of ten thousand dollars (\$10,000.00) by grantees and their contractors or subgrantees).

i.

Anti-kickback. Contractors shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (Applies to all contracts and subgrants for construction or repair).

j.

Davis-Bacon. Contractors shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Applies to all construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

j.

Work hours and safety standards. Contractors shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Applies to all construction contracts awarded by grantees and subgrantees in excess of two thousand dollars (\$2,000.00), and in excess of two thousand five hundred dollars (\$2,500.00) for other contracts which involve the employment of mechanics or laborers).

k.

Miscellaneous. All contracts shall contain provisions giving notice of awarding agency requirements and regulations pertaining to reporting, notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention

which arises or is developed in the course of or under such contract,
and awarding agency requirements and regulations pertaining to
copyrights and rights in data.

(Ord. No. 7972, § 1, 6-25-13)

Editor's note—

Ord. No. 7972, § 1, adopted June 25, 2013, amended § 2-80.1 to read as set out herein.

Former § 2-80.1. pertained to professional service contract procurement standards
and was derived from Ord. No. 7821, § 1, adopted May 15, 2012.