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ORDINANCE NO. 24,741

AN ORDINANCE RELATING TO ADMINISTRATION, AMENDING CHAPTER 2 OF THE OKLAHOMA CITY MUNICIPAL CODE, 2010, ARTICLE V PURCHASING PROCEDURES; SECTION 2-351 DEFINITIONS; SECTION 2-412 NOTICE INVITING BIDS; SECTION 2-414 BID OPENING PROCEDURES; SECTION 2-418 STATING OF REASON FOR AWARD TO OTHER THAN LOW BIDDER; ARTICLE X PUBLIC CONSTRUCTION CONTRACTS AND PROJECTS; SECTION 2-871 DEFINITIONS; SECTION 2-874 NOTICE INVITING BIDS; AND SECTION 2-876 SEALED BIDS REQUIRED; BID OPENING PROCEDURES; AND DECLARING AN EMERGENCY.

EMERGENCY ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OKLAHOMA CITY:

SECTION 1. That Sections 2-351, 2-412, 2-414 and 2-418 of Article V of Chapter 2 of the Oklahoma City Municipal Code, 2010, is hereby amended to read as follows:

ARTICLE V. PURCHASING PROCEDURES

DIVISION 1. GENERALLY

§ 2-351. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Agent or procurement purchasing agent* means the person designated by the City Manager or designated appropriate authority, as the procurement purchasing agent of the City.
- (2) *Award* means the presentation, after careful consideration, of a purchase agreement or contract to the selected bidder or offeror.
- (3) *Back order* means that portion of order for merchandise not available for delivery at the scheduled time and promised for delivery at a later date.

- (4) *Bid* means an offer at a quoted price submitted electronically in response to a request for bid (RFB) which can become a contract upon acceptance by the City.
- (5) *Bidder* means a vendor who submits a response to a request for bids.
- (6) *Bid bond* means a written agreement or check by which a third party guarantees that a bidder will accept a contract as bid, if it is awarded.
- (7) *Bid opening* means the public opening of electronic ~~and hard-copy~~ bids which are publicly revealed on the date and at the time and place provided in the bid specifications, and recorded and made available for public inspection.
- (8) *Can* means not always mandatory, a negotiable item.
- (9) *Certificate of insurance* means a form from an insurance company licensed to do business in Oklahoma which shows that the vendor is insured for the term of the contract for the amount stated in the specifications and listing the City as an additional insured.
- (10) *Claim voucher* means a form used by the City that must be completed by the vendor(s) in order to process payments for the purchase of materials, supplies, equipment or services consumed by the various departments/divisions of the City.
- (11) *Competitive bidding* means a fair and equitable means of allowing several vendors to offer price quotations and the City to award contracts to the vendor offering the lowest and best bid for the purchase of specified equipment, materials or service by the departments/divisions of the City.
- (12) *Confirming purchase order* means a purchase order restating the same terms originally encumbered and placed orally or in conjunction with a confirming purchase request.
- (13) *Confirming purchase request* means a purchase request submitted with all supporting documentation for an item or service that has already been received by the ordering department or division as a result of an emergency purchase. Supporting documentation should include an invoice, delivery ticket and any other documentation that might be particular to the purchase.
- (14) *Contract* means a legally binding agreement between two or more parties for the doing or providing of certain goods or services that is binding by law. Contracts of the City must be in writing and signed by the Mayor after Council authorization.
- (15) *Contractor* means a vendor that has been awarded a contract. A contractor may be an individual or a firm.
- (16) *Contractual services* means all City services governed by the provisions of the City Charter and more specifically including all telephone, gas, water, electric light and power service, towel and cleaning service, insurance, leases for all grounds, buildings, offices or other space required by the using agencies, and the rental, repair or maintenance of equipment, machinery and other City-owned personal property. The term shall not include professional and other contractual services which are unique and not subject to competition, nor shall it include public improvement

contracts for the construction, maintenance or repair of streets, alleys, sidewalks, storm sewers, water and sanitary sewer lines and plant facilities where such public improvement contracts are awarded pursuant to Charter provisions.

- (17) *Departmental representative* means a representative from the department in which the vendor is bidding on a contract.
- (18) *Disadvantaged owned business* means a business enterprise owned by racial minorities, women and handicapped. The City awards contracts on a strictly nondiscriminatory basis without regard to race, sex, age or other nonrelevant criteria.
- (19) *Emergency purchase* means a purchase that is made without competitive bidding due to a situation that could not have been reasonably foreseen and, whereby the immediate procurement of needed supplies and/or services is essential to prevent delays in the work of the ordering department, which may vitally affect the life, health or convenience of the citizens.
- (20) *Equal (. . . or equal)* means an item which may be substituted for a required item if it is matched, with no advantage on either side.
- (21) *Evaluation of bids* means the examination of bids after opening to determine the bidder's responsibility, responsiveness to requirements, and other characteristics of the bids relating to the award.
- (22) *Expedite* means to speed up an action; to facilitate a delivery of goods or services; to rush.
- (23) *Fiscal year contract* means the period of time specified for the performance of a contract covering July 1, _____ to the end of the then current fiscal year June 30, _____.
- (24) *Formal **competitive** bid* means a bid which must be submitted in a manner to be established by the City Council and in conformance with a prescribed format as stated in the bid specifications which is to be publicly revealed on the date and at the time and place provided in the bid specifications.
- (25) *Gratuity* means something given voluntarily and beyond obligation usually in return for or in anticipation of some service.
- (26) *Informal bid* means a request for price quotations for commodities or services that do not require a sealed bid, public opening, or public reading of bids.
- (27) *Invoice* means a detailed list of goods sold or services provided, together with the charges and the payment terms, which is furnished by the vendor to the City.
- (28) *Lowest and best bid* means the lowest dollar bid in response to a request for bid that conforms to the specifications and best meets the City's needs.
- (29) *May* means not always mandatory, a negotiable item.
- (30) *Monthly purchase order* means a purchase order that is intended to be an efficient means of placing orders and taking deliveries, on a repetitive basis of certain items covered under contract.

- (31) *Multiple award* means contracts awarded to more than one vendor for comparable supplies and services. Awards are made for the same generic types of items at various prices where the award to a single vendor would be impractical or fail to satisfy the total requirements.
- (32) *Must* means mandatory requirement.
- (33) *No bid* means a response to an invitation for bids stating that respondent does not wish to submit an offer. ~~It usually operates as a procedure consideration to prevent suspension from the bidder's list for failure to submit bids.~~
- (34) *Nonconformance* means the failure of materials or services to conform to specified requirements for any quality characteristic.
- (35) *Non-responsive bid* means a bid that does not conform to the mandatory or essential requirements of the invitation for bid.
- (36) *Notarization and acknowledgment means verification of a signature made under oath, and verified with an electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law and is attached to or logically associated with the signature.*
- ~~(376)~~ *One-time contract* means a single purchase of a specific item of equipment or specific quantity of material by competitive bidding.
- ~~(387)~~ *Open market purchase* means any purchase of supplies and/or contractual services that is made without formal competitive bidding.
- ~~(398)~~ *Open market purchase authority* means that supplies and/or contractual services that cost less than \$25,000.01 in City funds may be purchased on the open market by the procurement purchasing agent without a formal bid and without Council action. Items that cost in excess of \$25,000.00 in City funds can only be purchased on the open market by City Council action. This action is in the form of a resolution that waives competitive bidding and authorizes the open market purchase.
- ~~(4039)~~ *Performance bond* means conditions of guarantee by a third party in certain substantial bids, particularly, building and construction, for the faithful performance of a contract by the vendor.
- ~~(410)~~ *Performance specification* means a specification setting forth performance requirements determined necessary for the item involved to perform and last as required.
- ~~(424)~~ *Pre-bid conference* means a conference between the prospective bidders and representative(s) of the City held following the advertisement of request for bids, but before bid opening, to review and discuss the specifications without discussing prices.
- ~~(432)~~ *Pre-specification conference* means a meeting with buyer(s), departmental technical staff and prospective bidders to review and clarify the draft or proposed specifications of a complex nature, prior to advertising for request for bids.
- ~~(443)~~ *Price agreement or pricing agreement* means a continuing formal offer, from a vendor or contractor to the City, to provide products/services at a firm price for a set period of time and which agreement does not obligate

any City funds at the time the agreement is approved by the City Council. Pricing agreements shall contain a provision stating that the City is not obligated to make any purchases pursuant to the agreement.

- (454) *Professional services contract* or *professional service* means a contract or service that requires the contractor to perform personal services that are technical or professional in nature, that require professional or scientific judgment or other special skills, training, taste or discretion, or that are not subject to uniform specifications.
- (465) *Public purchasing* means the process of obtaining goods and services for public purpose, following procedures implemented to protect public funds from being expended extravagantly or capriciously.
- (476) *Purchase order* means the City's written document to a vendor that formally states all terms and conditions of a proposed purchase transaction.
- (487) *Purchase order number* means a number from a purchase order that is used to keep track of a purchase and that is sometimes issued verbally to authorize City purchase of services or materials.
- (498) *Qualified bidder* means a bidder determined by a buying organization to meet minimum set standards of business competence, reputation, financial ability, and product quality for placement on the bidder's list.
- (5049) *Quotation* means a statement of price, terms of sale, and description of goods or services offered by a seller to a prospective buyer (informal bid).
- (519) *Request for bid (RFB)* means an invitation to bidders requesting formal and informal bids that complies in all respects to detailed specifications.
- (521) *Request for proposal (RFP)* means an invitation to professional service providers requesting formal proposals for services that the professional service provider generally provides based upon the professional service provider's evaluation of the City needs for which detailed specifications are impractical.
- (532) *Requisition* means a standard transaction that the user departments complete in order to initiate purchases and encumbrances.
- (543) *Service contract* means a contract between a vendor and the department/division to perform certain work, especially not connected with a manufacturing result (e.g., industrial or electrical maintenance services) over a certain period of time, normally the fiscal year.
- (554) *Shall* means mandatory requirement.
- (565) *Sole source* means a vendor that is the only source for a service or item to be purchased. An example of a sole source is the purchase of maintenance on a machine that only the manufacturer can supply.
- (576) *Specifications* means a detailed and concise description of the materials/services including terms and conditions that tell the seller (vendor) what the buyer wants to purchase.
- (587) *Split purchase* means a purchase which is divided into orders involving sums lower than \$25,000.01 for the purpose of avoiding the requirement of this article which mandates competitive bidding when the total amount is in excess of \$25,000.00.

- (598) *State contract* means any contract let by the State pursuant to 74 O.S. § 85.7, as currently existing or as subsequently amended by the Oklahoma Legislature.
- (6059) *Supplies* means and includes all supplies, materials, and equipment.
- (610) *Surplus property* means property which has become obsolete to the City's needs.
- (621) *Tabulation of bids* means the recording of bids and bidding data submitted in response to a specific invitation for purposes of comparison, analysis, and recordkeeping.
- (632) *Technical specifications* means specific words, measurements, quantities or terms used to describe the components in the make-up of a product or service, so that the prospective bidder has an exact understanding of what the buyer is trying to purchase.
- (643) *Using agency* means any department, division, section, or other unit in the City government using supplies or procuring contractual services as provided for in this article.
- (654) *Will* means mandatory requirement.

DIVISION 3. FORMAL CONTRACTS

§ 2-412. - Notice inviting bids.

- (a) Notice inviting bids shall be published not less than one time in a daily newspaper published in the City. The newspaper notice shall include a general description of the services required or the commodities to be purchased or sold, state where bid documents may be obtained, and the time and place for the receipt of bids.
- (b) Notice may be sent to prospective bidders who have expressed an interest in bidding on the provision of services or commodities that are similar in character and ordinarily handled by the prospective bidder.
- (c) The ~~agent~~ City Clerk shall also advertise all pending purchases or sales by a notice posted on the public bulletin board in the Municipal Building and a listing on the City's website.

§ 2-414. - Bid opening procedures.

- (a) Bids shall be submitted in the manner provided by the bid specifications.
- (b) Bids shall be opened in public at the time and place stated in the public notices, in the manner provided by the bid specifications, in the presence of the agent, the City Clerk and the City Auditor, or their designees. The agent may postpone or cancel bid openings, by addendum (as defined in Section 2-871(b)), if it is in the best interest of the City. In the event of a City computer system failure, the bid

opening may be delayed or cancelled and all bids may be returned unopened, and in such an event, no prior notice of cancellation will be required. Bids not received by the City Clerk's Office prior to the bid receipt deadline shall not be opened and considered. Any bidder may review all bids after the bid opening during regular business hours, and under the supervision of the agent. Upon request, and in accordance with the Open Records Act, the public may obtain copies of any bids, or a portion of a bid, upon payment of the fees provided in Chapter 60, the General Schedule of Fees.

- (c) A tabulation of all bids received shall be forwarded to the City Manager by the agent with an appropriate recommendation for the acceptance or rejection of the bids. Upon request, the public may obtain copies of the tabulation upon payment of the fee provided in Chapter 60, the General Schedule of Fees.

§ 2-418. - Stating of reason for award to other than low bidder.

When the award is not given to the lowest bidder, a full and complete statement of the reasons for the award to another bidder shall be entered in the records of the City Clerk, whenever the low bidder is not best.

SECTION 2. That Sections 2-871, 2-874, and 2-876 of Article X of Chapter 2 of the Oklahoma City Municipal Code, 2010, is hereby amended to read as follows:

ARTICLE X. PUBLIC CONSTRUCTION CONTRACTS AND PROJECTS

DIVISION 1. GENERALLY

§ 2-871. - Definitions.

For public construction contracts and projects, the following terms shall have the meaning set forth herein:

- (1) *Addenda* or *addendum* means a written or graphic instrument issued prior to the opening of bids which clarifies, corrects or changes the bidding documents or the contract documents.
- (2) *Agent* or *construction purchasing agent* means the person designated by the City Manager as the construction purchasing agent of the City.

- (3) *Amendment* means a change order authorizing an addition, deletion or revision in the work or an adjustment in the contract price based upon the unit prices set forth in the bid.
- (4) *Bid* means a complete and properly signed proposal to do the work for the sums stated therein, submitted electronically in accordance with the bidding documents. A submission shall not be considered a bid if it is untimely. A submission by a proposed contractor or bidder who is not prequalified shall not be considered a bid unless prequalification is specifically waived in the bidding documents.
- (5) *Change order* means a document recommended by the engineer, which is signed by the contractor and owner and authorizes an addition, deletion or revision in the work, or an adjustment in the contract price or the contract time, issued on or after the effective date of the agreement.
- (6) *Prequalification* means compliance with the procedure set forth in the bidding documents as a precondition to submitting a bid.
- (7) *Public construction contract* shall have the meaning set forth in 61 O.S. § 102, as currently existing or as subsequently amended by the Oklahoma Legislature.
- (8) *Public construction project* shall mean any City project for construction work to be paid for by an outlay and expenditure of City funds and/or that requires a public construction contract.

§ 2-874. - Notice inviting bids.

- (a) Notice inviting bids for a public construction project shall be published not less than one time in a daily newspaper published in the City. The newspaper notice shall include: a general description of the public construction project; where bidding documents may be obtained; and the time and place for receipt of bids.
- (b) Notice of all pending public construction projects shall be advertised by a notice posted on the public bulletin board in the Municipal Building and a listing on the City's website.

§ 2-876. - Sealed bids required; bid opening procedures.

- (a) Bids for public construction projects shall be submitted in a sealed envelope addressed to the City Clerk and shall be identified as a bid on the envelope. Each bidder shall accompany the bid with a sworn statement in writing that the bidder has not, directly or indirectly, entered into any agreement, express or implied, with any other bidder or bidders, having for its object the controlling of the price or amount of such bid or any bids, the limiting of the bids or bidders, or the

- parceling or farming out to any bidder or bidders or other persons of any party of the contract or any part of the subject matter of the bid or of the profits thereof.
- (b) Bids shall be opened in the presence of the Purchasing Agent or designee, the City Clerk or designee and the City Auditor or designee. Bid openings shall be open to the public. The City Engineer may postpone or cancel bid openings by addendum, if it is in the best interest of the City. Bids not received by the City Clerk prior to the bid receipt deadline shall not be opened and considered. Bids may be reviewed during regular business hours, in the City Clerk's Office and under the supervision of the City Clerk, after the opening. Upon request, copies of any bid, or portion of a bid may be obtained as provided by City ordinance.
 - (c) Tabulation of all bids received shall be forwarded to the City Manager by the originating department with appropriate recommendation for acceptance or rejection of bids. ~~Upon request, copies of the tabulation of bids may be obtained as provided by City ordinance.~~ **After award of the contract, U**pon request, copies of the tabulation of bids may be obtained as provided by City ordinance.
 - (d) Addenda made to the bidding documents, plans, bid notice requirements, or specifications, prior to bid opening, shall be provided to all prospective bidders who have downloaded the bidding documents in the electronic bidding system. ~~signed the bidding document receipt list for the project which is kept in office of the City Clerk.~~
 - (e) Addenda may be approved by the City Council prior to bid opening. If not, addenda may be ratified by the City Council. If the City Council does not ratify an addendum, all bids shall be rejected.

SECTION 3. EMERGENCY. WHEREAS, it being immediately necessary for the preservation of the peace, health safety and public good of Oklahoma City and the inhabitants thereof that the provisions of this ordinance be put into full force and effect, and emergency is hereby declared to exist by reason whereof this ordinance shall take effect and be in full force from and after the date provided herein as provided by law.

INTRODUCED AND READ in open meeting of the Council of The City of Oklahoma City this 27th day of August, 2013.

ADOPTED by the Council and **SIGNED** by the Mayor of The City of Oklahoma City this 24th day of September, 2013.

ATTEST: (Seal)

Frances Kersey
City Clerk

s/b Mick Cornett
Mayor