

Maryury Collier

From: Paul Bassar
Sent: Tuesday, August 16, 2016 1:30 PM
To: Maryury Collier
Subject: FW: Competitive Bidding or Competitive Proposals Required; Exceptions
Attachments: opurchasinginsuranceexempt3dpartyadminser.doc

Hi Maryury—can you please create an Agenda Item into Legistar (attached)? Thank You

From: Alan Fallik
Sent: Tuesday, August 16, 2016 9:22 AM
To: Paul Bassar; Tammie Hechler
Cc: George Keller; Jeffrey Sheffel
Subject: RE: Competitive Bidding or Competitive Proposals Required; Exceptions

I have no problem meeting to discuss this issue, but in the meantime, Tammie has an issue that needs resolution. I spoke to Jeff, and based on past practice and the language in the current exemption for professional services, he is not convinced that third party administrative services for self-insurance programs fall within the exemption. Therefore, based on my previous discussion about this with Tammie and George, I have drafted the attached ordinance expanding the application of the exemption for purchases of insurance.

If this ordinance is acceptable, feel free to enter it into Legistar.

From: Paul Bassar
Sent: Tuesday, August 09, 2016 12:13 PM
To: Tammie Hechler; Alan Fallik
Cc: George Keller
Subject: RE: Competitive Bidding or Competitive Proposals Required; Exceptions

Hi Alan—Since moving over to the Procurement Office, the topic of Professional Services (PS) seems to be uncertain in different areas—as written in our Purchasing Ordinance.

From a Procurement Perspective—my opinion of PS is in-line with the Federal Government Guidelines (GSA eLibrary). The federal government identifies the following as PS. The highlighted list the subsection of each category. At the very bottom is Integrated Services—as a Contract Compliance Officer, if work falls within the Scope of Integrated Services I would consider the work to be Professional Services, again only my opinion.

I do think it's worthwhile to setup a meeting, in the near future, to discuss PS and to better define the type of work/Scope when determining PS?

Professional Services

- ▶ Advertising & Marketing Services (AIMS)
- ▶ Engineering Services (PES)
- ▶ Financial Services (FABS)
- ▶ IT Professional Services
- ▶ Language Services
- ▶ Logistics Services (LOGWORLD)
- ▶ Mission Oriented Business Integrated Services (MOBIS)
- ▶ Scientific & Medical Services
- ▶ Temporary Staffing Services
- ▶ Training Services

Services | Professional Services

Mission Oriented Business Integrated Services (MOBIS)

This solution set features a suite of professional management consulting services, such as A76 studies, management surveys, training, project management, EIRO consultation and many more!

- ▶ Acquisition Management Support
- ▶ Integrated Business Program Support Services
- ▶ Integrated Consulting Services
- ▶ Off-the-Shelf Training Devices and Training Materials
- ▶ Training - DAU and FAI Certified DAWIA and FAC Acquisition Workforce
- ▶ Training - Instructor Led, Web Based, Education Courses, Course Development, Testing

Integrated Consulting Services

Mission Oriented Business Integrated Services

Category	Description
<u>874 1</u>	Integrated Consulting Services: - Contractors shall provide expert advice and assistance in support of an agency's mission-oriented business functions. Services covered by this SIN include: Management or strategy consulting, including research, evaluations, studies, analyses, scenarios/simulations, reports, business policy and regulation development assistance, strategy formulation, and expert witness services

- * Facilitation and related decision support services
- * Survey services, using a variety of methodologies, including survey planning, design, and development; survey administration; data validation and analysis; reporting, and stakeholder briefings
- * Advisory and assistance services in accordance with FAR 37.203

NOTE: Consulting services where the preponderance of work is specifically covered under other PSS SINS or GSA Schedules are not permitted under this SIN.

NOTE: Legal, expert witness, consulting, and audit services pertaining to financial matters are not covered under this SIN. Refer to 520 SINS. Consulting services relating to public relations are not covered under this SIN. Refer to SIN 541-2, Public Relations Services.

From: Tammie Hechler
Sent: Tuesday, August 09, 2016 11:03 AM
To: Paul Bassar
Subject: FW: Competitive Bidding or Competitive Proposals Required; Exceptions

Paul – Can you please touch bases with me regarding this???

Thanks much.

From: Alan Fallik
Sent: Tuesday, August 09, 2016 10:18 AM
To: Tammie Hechler
Subject: RE: Competitive Bidding or Competitive Proposals Required; Exceptions

I don't think TPA services are "professional services," as used in the Purchasing Ordinance. I looked up "profession" in two dictionaries. While there are several definitions in each of the dictionaries, I believe the ones that apply to this use are "a vocation requiring knowledge of some department of learning or science" and "a calling requiring specialized knowledge and often long and intensive academic preparation." I simply don't see these services as requiring knowledge of some department of learning or science or specialized knowledge.

We have spent a considerable amount of time in the past analyzing particular services to determine whether they are professional services. I'm pretty sure that based upon past practice (and I recognize that past practice is not always correct), TPA services are not the type of services that we have determined to be professional services.

From: Tammie Hechler
Sent: Monday, August 08, 2016 5:19 PM
To: Alan Fallik
Subject: RE: Competitive Bidding or Competitive Proposals Required; Exceptions

Alan,

Why could not TPA Services fall under Professional Services? It is a function performed by an insurance company and is professional in nature.

From: Alan Fallik
Sent: Monday, August 08, 2016 5:04 PM

To: Tammie Hechler

Subject: Competitive Bidding or Competitive Proposals Required; Exceptions

As you requested, I am sending you Section 38.40 of the Code of Ordinances (set forth below).

§ 38.40 COMPETITIVE BIDDING OR COMPETITIVE PROPOSALS REQUIRED; EXCEPTIONS.

(A) All purchases of, and contracts for, supplies and contractual services, when the estimated annual cost thereof shall exceed \$50,000, shall, except as specifically provided herein, be based, wherever possible, on competitive bids.

(B) When the Director determines that the use of competitive bidding is not practicable for a purchase of, or contract for, supplies and/or contractual services with an estimated annual cost in excess of \$50,000, such supplies and/or contractual services shall be purchased by competitive proposals. A request for proposals shall be issued. To assure full understanding of and responsiveness to the solicitation requirements and full understanding of proposals, discussions may be conducted with qualified offerors who submit proposals. The 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 through negotiations prior to award for the purpose of obtaining best and final offers. The award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the city.

(C) Only the following situations are exempt from the competitive bid and competitive proposal requirements of this subchapter:

(1) *Emergency purchases.* In urgent cases of compelling emergency which require the immediate purchase of supplies or contractual services, the City Manager is empowered to authorize the Director to secure by open market procedure as herein set forth, at the lowest obtainable price, any supplies or services meeting the competitive bid requirement. All such emergency purchases must receive prior approval of the City Commission, except for the most urgent situation presenting a clear and present substantial threat to life or property where immediate action is required and a quorum of the Commission for an emergency special meeting cannot be obtained before the deadline for action. For those contracts which the City Manager is otherwise authorized to award, he/she may waive competitive bidding under this paragraph without receiving the City Commission's prior or subsequent approval.

(2) *Professional services.* Contracts for professional services involving peculiar skill, ability, experience or expertise, which are in their nature unique and not subject to competitive bidding or competitive proposals, are exempt from this subchapter; however, state laws, such as the Consultants' Competitive Negotiation Act, to the extent applicable, shall be followed.

(3) *Sole-source supplies and services.* Sole-source supplies and services, such as unique, patented, or franchised supplies or services, are exempt if the Director determines, after conducting a good faith review of available sources, that the particular supply or service is available from only one source; however, such purchases with an estimated annual cost in excess of \$50,000 require a formal written contract approved by the Commission.

(4) *Disaster preparedness.* Contracts for the supply of foods, goods and services made in contemplation and preparation for the occurrence of a natural or man-made disaster or of civil unrest, where availability rather than price is the controlling factor, are exempt from this subchapter; however, all such contracts shall receive the approval of the Commission.

(5) When it is in the best interest of the city, the Director may procure, without following formal contract procedure, all supplies, materials, equipment and contractual services which are the subject of contracts with the state, its political subdivisions, the United States government, other governmental entities, or a corporation not for profit whose members are governmental entities, public officers, or any combination thereof; provided, however, that this subsection shall apply only if (i) the supplies, materials, equipment or contractual services are the subject of a price schedule negotiated by the state or the United States government, or (ii) the supplies, materials, equipment or contractual services are the subject of a contract with another governmental entity or a corporation not for profit whose members are governmental entities, public officers, or any combination thereof, which contract is based strictly on competitive bids or competitive proposals and not on any preference.

(6) *Construction services.* Purchases of construction services are exempt from this subchapter. However, any such purchase which would otherwise be required to be based on competitive bids or competitive proposals and which is not based on competitive bids or competitive proposals shall be based on design-build, as regulated by the state law known as the "Consultants' Competitive Negotiation Act," or "construction management at risk." The City Manager or his/her designee shall be authorized to determine whether to use competitive bids, competitive proposals, design-build or

“construction management at risk”. At the conclusion of whichever process is selected by the City Manager or his/her designee, the purchase must receive prior approval of the City Manager, for those contracts which he/she is otherwise authorized to approve, or the City Commission, for all other contracts.

(7) *Tangible personal property that goes into or becomes a part of public works.* Purchases of tangible personal property that is installed by contractors or subcontractors and that goes into or becomes a part of city property or city facilities are exempt from the competitive bid and competitive proposal requirements of this subchapter; provided, however, that this exemption shall apply only when the contractor is obligated, by the terms of the contract, not only to install the tangible personal property but also, on behalf of the city, to take all actions necessary and appropriate to cause the purchase to be made. For all purchases exempt under this paragraph, the separate approval of the City Commission shall not be required. Contractors include, but are not limited to, persons engaged in building, electrical, plumbing, heating, painting, decorating, ventilating, paperhanging, sheet metal, roofing, bridge, road, waterworks, landscape, pier, or billboard work.

(8) *Best interest of the city.* Purchases of, and contracts for, supplies or contractual services, when the Commission declares by a five-sevenths (5/7ths) affirmative vote that competitive bidding and competitive proposals are not in the best interest of the city, are exempt from this subchapter. The Commission shall not use this exemption in an arbitrary or capricious manner but shall use it only in rare situations after making specific factual findings that support its determination that competitive bidding and competitive proposals are not in the best interest of the city. In the event that competitive bidding and competitive proposals are waived under this paragraph, the open market procedure set forth in § 38.43 shall be utilized. For those contracts which the City Manager is otherwise authorized to award, he/she may waive competitive bidding and competitive proposals under this paragraph.

(9) *Insurance.* Purchases of insurance through the city's agent of record are exempt from the competitive bid and competitive proposal requirements of this subchapter; however, such purchases with estimated annual cost in excess of \$50,000 require prior approval of the governing body.

(10) *Other contractual services not subject to competitive procurement requirements.*

(a) Software licensing and maintenance with the company from which the software was purchased, as set forth in § 38.42 or § 38.43, or its authorized representative;

(b) Servicing or warranty work of equipment by the authorized dealer or manufacturer's representative, when required to maintain a warranty in full force and effect, or when considered to be in the best interest of the city and recommended by the using department, and the services to be performed are by the equipment manufacturer, manufacturer's service representative, or a distributor of the manufacturer's equipment;

(c) Advertising in newspapers, periodicals, television, radio, billboards or other formal advertising media;

(d) Educational books, technical publications or other type trade journals;

(e) Utilities, including but not limited to, electric, water, storm water, sewer; and

(f) Governmental, professional or organizational membership dues or fees;

(g) Shipping, freight and postage charges;

(h) Artistic, academic and entertainment performances, including entertainment, lectures, seminars, speeches, cultural and artistic presentations; excluding production companies.

(D) Any other provision of Chapter 38 to the contrary notwithstanding, city purchasing shall be conducted in accordance with applicable provisions of F.S. §§ 180.24 and 255.20.