

CITY OF HOLLYWOOD, FLORIDA
INTER-OFFICE MEMORANDUM
OFFICE OF PROCUREMENT AND CONTRACT COMPLIANCE

DATE: June 10, 2020 **FILE:** FASPM-2020-01

TO: Dr. Wazir Ishmael, City Manager

VIA: Adam Reichbach, Assistant City Manager
for Finance and Administration

FROM: Paul Bassar, Director

SUBJECT: Changes for Second Reading of PO-2020-08

ISSUE:

The issue is incorporating various changes to PO-2020-08, Procurement Ordinance, as approved on first reading by the City Commission during its June 3, 2020 meeting, for the second reading of the Ordinance.

EXPLANATION:

The Office of the Procurement Services and Contract Compliance presented at the June 3, 2020 Commission meeting first reading of PO-2020-08 which is titled:

AN ORDINANCE OF THE CITY OF HOLLYWOOD,
FLORIDA, REPEALING THE PURCHASING ORDINANCE,
WHICH CONSISTS OF SECTIONS 38.35 - 38.52 OF THE
CODE OF ORDINANCES, CREATING THE
PROCUREMENT CODE, ALSO TO BE KNOWN AS THE
PROCUREMENT ORDINANCE, CONSISTING OF NEW
SECTIONS 38.35 – 38.53 OF THE CODE OF ORDINANCES
AND THAT WILL GOVERN THE CITY'S PURCHASE OF
GOODS, SUPPLIES, MATERIALS, EQUIPMENT AND
SERVICES.

The City Commission passed the Ordinance unanimously on first reading with the following revisions which have been made and incorporated into the Ordinance for City Commission consideration on second reading. The revisions are:

1. Adding in Section 38.37 a definition of competitive bidding process as differentiated from the Formal Solicitation Procedures to address those

procurements of goods and services which will not use the Formal Solicitation Procedures as set forth in the Code.

Competitive Basis is the process that is used when a Formal Solicitation Procedure as set forth in this subchapter is not used, with different requirements depending upon the value of the procurement. These requirements are set forth in detail in the Procurement Manual.

Competitive Bid, Competitive Bidding is a procurement method in which 1) prices from competing contractors, suppliers or vendors are invited by openly advertising the scope and specifications of the proposed contract, and 2) the contract is awarded based on lowest price and best value to the City.

Competitive Selection is a procedure ~~in which~~ whereby:

(4) The selection committee shall determine the relative ability of each firm or respondent to perform.

2. Revising the definition of Construction Management at Risk in Section 38.37 to clarify what is covered by that term.

Construction Management at Risk is a method of construction contracting in which the prime contractor is selected by competitive selection and competitive negotiation to provide ~~design phase consulting services~~, management and contractual responsibility for the total construction project. A fee is negotiated for profit, overhead and direct management costs. All subcontracts are awarded by the prime contractor based on competitive bids received in response to invitations to bid issued by him/her. A guaranteed maximum price, or GMP, is provided by the prime contractor, and the total price paid to the prime contractor is either the fee plus the actual construction cost or the guaranteed maximum price, whichever is less.

3. Revising the definitions in Section 38.37 of Responsive and Responsible as follows:

Responsible Proposer, Bidder, Offeror, or Respondent means a firm or individual that is fully capable of meeting all requirements of the solicitation and subsequent contract. The respondent must possess the full capability, including financial and technical, ability, business judgment, experience, qualifications, facilities, equipment, integrity, and reliability, in all respects to perform fully the contract requirements and assure good faith performance as determined by the City.

Responsive Proposer, Bidder, Offeror, or Respondent means a firm or individual that has submitted a bid, offer, quote, or response that conforms in all material respects with the competitive solicitation document and all of its requirements.

4. Adding language to Section 38.40(A) to ensure all entities doing business with the City must be authorized to do business in the State of Florida.

(16) Ensure that all entities from which the City procures goods, supplies, materials, equipment or services are authorized to do business in the State of Florida.

5. Adding language to Section 38.40(B)(p) of the Code dealing with debarment to add a procedure for appealing a debarment. The process will be substantially the same as the process for a Bid or Award Protest.

(iii) The process for an appeal of a debarment will substantially follow the process for a Bid or Award Protest as set forth in Section 38.52, below, and will be further set forth in the Procurement Manual.

6. Revised Section 38.41(A) to clarify intent.

(A) All purchases of and contracts for goods, supplies, materials, equipment or services, when the estimated annual cost thereof shall exceed \$5,000, shall, except as specifically provided in this subchapter herein, be based, wherever possible, on a competitive basis. For purchases of and contracts for goods, supplies, materials, equipment or services when the estimated annual cost thereof shall not exceed \$5,000, a minimum of one written quote is required, with three quotes recommended.

7. Revising Section 38.41(C)(1) dealing with the Emergency Purchases competitive procurement exemption to remove unnecessary language.

(1) Emergency purchases. In urgent cases of compelling emergency that require the immediate purchase of goods, supplies, materials, equipment or services, the CPO is authorized to secure, when possible, emergency goods, supplies, materials, equipment or services by open market procedure. All such emergency purchases must receive prior administrative approval except for the most urgent situations presenting a clear and present substantial threat to life or property where immediate action is required. ~~For those contracts that 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.~~

8. Revising Section 38.41(C)(2) dealing with the Sole Source competitive procurement exemption to remove unnecessary language.

(2) Sole-source goods, supplies, materials, equipment and services. Sole-source goods, supplies, materials, equipment and services, such as unique, patented, or franchised goods, supplies, materials, equipment or services, are exempt from the requirement of this subchapter if the CPO 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 or purchase order. Such purchases in excess of \$100,000 shall be approved by the City Commission.~~

9. Revising Section 38.41(C)(3) to further clarify the exemption for Original equipment Manufacturer Supplies.

(3) Original Equipment Manufacturer (“OEM”) Supplies. Supplies that require replacement and are only to be replaced with original manufacturer parts. The CPO will ascertain along with the using agencies which purchases are deemed as OEM and are considered exempt.

10. Revising Section 38.41(C)(4) dealing with the Contracts for the Supply of Disaster Preparedness competitive procurement exemption to clarify when this exemption is eligible for use.

(4) Contracts for the supply of disaster preparedness. The supply of provisions, goods, supplies, materials, equipment or services made in contemplation and preparation for the occurrence of a natural or man-made disaster or of civil unrest, where, in the determination of the City Manager, and with written notice to the City Commission, availability rather than price is the controlling factor, are exempt from this subchapter. ~~However, all such contracts exceeding \$100,000 shall receive the approval of the City Commission.~~

11. Revising Section 38.41(C)(6) governing the exemption of competitive procurement of construction services to clarify when the exemption is eligible for use, and governance of “design-build”, CCNA (Consultants Competitive Negotiation Act and “construction management at risk” projects.

(6) Construction services. ~~Purchases of construction services are exempt from this subchapter. However, any such purchase that would otherwise be required to be based on competitive bids or competitive proposals but which is not based on competitive bids or competitive proposals shall be~~ Projects based on design-build, as regulated governed by the CCNA, State law known as the “Consultants’ Competitive Negotiation Act,” or “construction management at risk”, may be exempt from the competitive bid or competitive proposal requirements of this subchapter, if they are based on a qualifications based selection process. The CPO shall be authorized to determine whether to use competitive bids, competitive proposals, design-build or “construction management at risk”, subject to the requirements of Section 287.055, Florida Statutes, and any other governing State law. At the conclusion of whichever process is selected by the CPO, the purchase must receive the approval of the City Manager for those contracts which he/she is otherwise authorized to approve, or the City Commission for all other contracts.

12. Revising Section 38.41(C)(8) to specify and clarify when the exemption for competitive procurement of tangible personal property may be utilized.

(8) Tangible personal property that goes into or becomes a part of public works. Purchases of tangible personal property that is installed by a contractors or subcontractors and that goes into or becomes a part of City property or City

facilities, as part of a construction project, are exempt from this subchapter. However, 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, sheet metal, roofing, bridge, road, waterworks, landscape, pier, or billboard work.

13. Adding language to Section 38.41(C)(10) to require competitive procurement of insurances by the City's Agents of Record.

(10) Insurance. Purchases of insurance through the City's agent(s) of record are exempt from the competitive bid and competitive proposal requirements of this subchapter. Agent(s) of record shall be required to procure insurance on a competitive basis. However, such purchases with an estimated annual cost in excess of \$100,000 require prior approval of the City Commission. When the City is self-insured, "insurance" shall include third party administrative services.

14. Revising language to clarify Section 38.43(B)(2) related to securities on performance (payment and performance bonds).

(2) Sureties on performance.

For all bids and/or proposals seeking goods, supplies, materials, equipment or services, except for construction projects, the CPO or appropriate staff person shall determine if a payment and performance bond is required. In compliance with §255.05(1), Florida Statutes, for all construction projects in excess of \$200,000, the CPO or appropriate staff person shall require a payment and performance bond for the total contract amount, after the award and prior to issuance of a notice to proceed. In compliance with §255.05(1)(d), Florida Statutes, the City Manager may exempt a person entering into a construction project contract in an amount not in excess of \$100,000 from executing a payment and performance bond, and the City Commission may exempt a person entering into a construction project contract in an amount in excess of \$100,000 but not in excess of \$200,000 from executing a payment and performance bond. The City Manager shall have the discretion to waive this requirement in the event of an emergency. Any bonding company used must be listed on the United States Department of the Treasury's Circular 570. Additionally, the bonding company must be rated at least "A," Class X, by "Best's Key Rating Guide," published by A.M. Best Company, and authorized to do business under the laws of the State of Florida.

15. Adding language in Section 38.44(A) to govern when written contracts and purchase orders are required.

(A) Thresholds. All purchases of goods, supplies, materials, equipment or services of an estimated annual value not to exceed \$50,000 shall be purchased either in the open market, without advertisement and without observing the procedures prescribed in § 38.41(A) and (B) above, or in accordance with the procedures prescribed by § 38.41(A) and (B) above, as deemed appropriate by the CPO for the awards of formal contracts. All goods, supplies, materials, equipment or services procured as set forth in this section shall require a written contract or purchase order. All sales of personal property that has become obsolete and unusable of an estimated value not to exceed \$25,000 shall be sold in the open market, without advertisement and without observing the procedures prescribed in § 38.41(A) and (B) above.

16. Revising language in Section 38.48(E)(1) and (2) governing approval authority for change orders not exceeding \$10,000.

~~(1) Construction changes requiring timely and expedited action in the field and that do not exceed the total monetary value of \$5,000 may be authorized by the Assistant Director of the Department of Public Utilities for utility construction projects, and by the Senior Project Manager or Assistant Director of the Department of Design and Construction Management for design and construction management projects. For construction projects that include services provided by a construction manager engaged by the City, the Assistant Director of the Department of Public Utilities or the Senior Project Manager or Assistant Director of the Department of Design and Construction Management, must obtain the construction manager's written concurrence that a construction change is necessary and that such change is consistent with the project's original scope of services. A construction change as previously described may only occur when, prior to the commencement of any work, a written change order is executed by the individuals authorized herein and the construction contractor.~~

(12) Construction changes requiring timely and expedited action in the field and which ~~exceed \$5,000 but~~ do not exceed \$10,000 may be authorized by the Director of Public Utilities or designee or the Director of Design and Construction Management or designee. For construction projects that include services provided by a construction manager engaged by the City, the Director of Public Utilities or the Director of Design and Construction Management must obtain the construction manager's written concurrence that a construction change is necessary and that such change is consistent with the project's original scope of services prior to the execution of a change order. A construction change, as previously described, may only occur when, prior to the commencement of any work, a written change order is executed by the individuals authorized herein and the construction contractor.

17. Deleting Section 38.51(B) as the language therein is redundant.

~~(B) Process.~~

~~Competitive bid. For bid evaluation purposes, the City will use a best value approach in determining an awardee. Awarding of contracts through a bid process will be based on the total cost of ownership in determining the true cost and the best value for the City.~~

18. Revising Section 38.51(B) and (C) to maintain the ceiling for Set-Aside projects at \$100,000 and improve the flow of the language governing eligibility and exceptions.

~~(B)(6) Set-aside bids. Electrical, fencing, janitorial, landscaping, painting, sprinkler/irrigation, welding, automotive, and printing services shall be procured by set-aside when the estimated annual cost does not exceed \$100,000\$50,000. No procurement shall be done as a set-aside unless there are a minimum of three Hollywood vendors that appear to capable of providing the services to be procured. Award for these services will be determined by Best Value. Vendors will not be eligible to participate in a set-aside program procurement if their response is determined to be non-responsive or non-responsible, if they have been debarred, or if they are not current on their Local Business Tax.~~

~~(C)(6) Exceptions. No local Hollywood vendor preference will be included in the following solicitations:~~

~~(1) A cooperative purchase.~~

~~(2) A purchase with respect to which the use of local Hollywood vendor preference is prohibited by state, local, or federal law.~~

~~(3) A purchase funded in whole or in part by a governmental entity, where the applicable laws, rules, regulations or policies prohibit the use of local preferences.~~

~~(4) A local Hollywood vendor that is non-responsive or non-responsible.~~

~~(45) An exempt purchase under § 38.41(C) from the competitive bid and competitive proposal requirements of the Purchasing Code.~~

~~(56) Any solicitation exempted by the City Manager and/or the City Commission from the local Hollywood vendor preference.~~

~~(7) A local Hollywood vendor that has been debarred.~~

19. Deleting certain language from Section 38.53(D) governing exceptions from when Prevailing Rate of Wages is required.

~~(D) Exceptions. The provisions of this section shall not apply to any City construction project when the contractor for the project has been terminated for~~

~~any reason, when a project is re-bid for any reason or when a project uses a design-build contract.~~ The provisions of this section shall also not apply to any off-site improvements to be made by a developer as required by the City as a condition of the issuance of a development permit or to any construction project performed by the City utilizing its own employees.

In addition, there were revisions to formatting, such as bolding of section titles, and scrivener's revisions, such as changing "this Procurement Code" to "the Procurement Code", for one example, in several instances.

RECOMMENDATION:

The recommendation is to include the above revisions to the Ordinance for City Commission consideration on second reading.