

2510.8 SUBJECT: PROCUREMENT OF CONSTRUCTION SERVICES

:1 OBJECTIVE:

To establish a uniform policy and procedure for the acquisition of construction services for the City of Orlando (City), including, but not limited to, streets, highways, curbing, sidewalks, storm and sanitary sewers, lift stations, treatment plants, drainage canals, fire stations, police facilities, recreation centers, parks, playgrounds and playground facilities, that are consistent with the City's Procurement Code and applicable state and federal laws.

:2 AUTHORITY:

This procedure amended by City Council on January 28, 2013, Item A-3.

:3 DIRECTION:

The Chief Financial Officer, as an appointed official, serves at the pleasure of, and receives direction from the Mayor.

:4 FUNCTIONS:

A. Introduction

City government, as an institution, has multiple partners including citizens, taxpayers, businesses, visitors, employees, and other governments. As a major institutional, economic, and service force in the region, it is important that the City strengthen relationships with its partners by adopting a clear and comprehensive set of policies and procedures.

Furthermore the integrity of the City of Orlando is of utmost importance, and adopting a set of policies is a key element to maintain this integrity. The purpose of this policy is to provide policy direction for the selection of contractors to perform construction projects for the City.

B. Construction Delivery Methods

Except as otherwise provided in City Code or by applicable policy and procedure, the procurement of construction services that exceed \$100,000.00 will require a formal competitive solicitation process such as the Invitation for Bid, Request for Proposal, or Request for Qualification.

Construction delivery methods may include, but are not limited to:

1. Design-Bid-Build Format

The City may use a Design-Bid-Build format where the City will

develop or contract with a consultant to develop the technical specifications and drawings, after which the City will solicit sealed construction bids in accordance with the City procurement process.

2. Rapid Response

The City will execute Rapid Response Contracts to be utilized for minor or emergency infrastructure projects. On a project-by-project basis, the Public Works Director or designee will issue rapid response task orders as allowed under the terms of the contract or as authorized by City Council. All rapid response contractors qualified to perform a particular category of work shall be provided the opportunity to bid on minor contracts.

3. Design-Build Format

The City may deliver a construction project using a Design-Build format as defined in Chapter 287.055, Florida Statutes, as may be amended from time to time. This procurement method involves selecting a Design-Builder, responsible for both the design and construction of the project as a single entity.

4. Construction Manager at Risk

The City may deliver a construction project using a Construction Manager at Risk (CMR) format. The selection of the successful contractor under this process is based upon procedures allowed under Florida Statutes 255.20 and 255.103, as may be amended from time to time. The CMR directs and coordinates the entire project including bidding out all subcontract requirements.

C. Implementation of Capital Improvement and Infrastructure Development (CIID) Construction Projects

When applicable, the following provisions shall be included in procurement for construction services that are managed by CIID.

1. Responsible Contractor's Policy

The following policy language will be added, in the appropriate sections, to all solicitations for construction contracts with an estimated value of at least \$100,000. This provision will not apply to consulting or professional service contracts.

Construction contracts that are estimated to exceed \$100,000 shall also require the Contractor to post a copy of the City's responsible contractor policies at designated location(s) at the job site.

The contractor, including its subcontractors at all tiers, when paying the workers on this project, shall pay such workers an hourly wage, based on classification, for the Orlando region established by the Davis-Bacon Act (40 U.S.C. 276a-7) as supplemented by the U.S. Department of Labor regulations (29 CFR part 5) (hereinafter "hourly wage"). Additionally, the contractor shall provide said workers with health benefits. The contractor may satisfy this health benefits requirement by providing workers on the project either, 1) health benefits through a bona fide program, or 2) by increasing the hourly wage by 20%. Evidence of the existence of a bona fide health benefits program, satisfactory to the City, must be submitted to the Public Works Department. Payment of the appropriate wages must be documented in the contractor's progress payment applications through the submission of certified payrolls from the contractor for the duration of the contract. Moreover, the contractor shall require that this provision be included in contracts with all subcontractors at all tiers, and will be held responsible for compliance by any subcontractor or lower tier subcontractor. Notwithstanding the foregoing, the contractor acknowledges and agrees that no hourly wage paid on this project will be less than the living wage referenced in the contract.

2. Apprenticeship Program

The following language shall be added, in the appropriate section, to solicitations for construction contracts in which the primary purpose of such contract is the construction of a building, such as a parking garage, community center, or wastewater treatment plant, and the estimated construction cost exceeds \$500,000. This provision does not apply to consulting or professional service contracts.

The contractor shall comply with the City of Orlando's Apprenticeship Program ("Program") requirements. The goal of this Program is to have 10% of the contractor's and first and second tier subcontractors' work hours sourced from registered State of Florida Pre-Apprenticeship/Apprenticeship Programs, if available. The General Conditions of the Contract Documents provide a listing of the trade positions recognized by the City of Orlando as qualified to meet the intent of this Program and will be credited to meeting the Program goal. The bidder should, at the time of bid opening, submit the name(s) of the registered State of Florida Pre-Apprenticeship/Apprenticeship Program provider(s) that it will utilize.

3. Prohibition on Skilled Workers From Temporary Staffing

For contracts for which the primary purpose is the construction of a building, such as a parking garage, community center or wastewater treatment plant, and the estimated construction cost exceeds \$500,000, the construction contract shall prohibit the contractor and subcontractors at all tiers from using skilled workers from temporary staffing firms to provide labor on the project.

4. Independent Contractors

Construction contracts that are estimated to exceed \$100,000 shall require the contractor and subcontractors at all tiers to classify all of their workers as employees or independent contractors in accordance with the requirements of federal law and regulations.

Further, workers who are employees as defined by federal laws and regulations shall not be classified as independent contractors. Contractors and subcontractors at all tiers shall be required to provide written notice of employment status to their workers on the project classified as independent contractors within seven (7) days after award of contract (or within seven (7) days of hiring if hired subsequent to contract award). Documentation demonstrating compliance with this condition for each applicable worker shall be submitted with the first pay request, or for those hired after submittal of the first pay request, with the first pay request submitted subsequent to the worker's hiring.

5. E-Verify

Construction contracts that are estimated to exceed \$100,000 shall require the contractor and subcontractors at all tiers to utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to verify the employment eligibility of all new employees hired during the term of the contract. Documentation of E-Verify confirmation shall be submitted with the first pay request, or for those hired after submittal of the first pay request, with the first pay request submitted subsequent to the worker's hiring.

D. Amendments and Change Orders

The Public Works Director or designee, by delegation from the CPO, shall negotiate contract amendments and change orders on behalf of the City for construction contracts in accordance with City Code.

For smaller construction projects where ten percent (10%) of the original

contract amount is less than the fixed dollar amendment and change order authority granted to the Chief Procurement Officer (CPO) for non-construction contracts pursuant to the City Code, the CPO shall have the authority to execute amendments and change orders up to the limits permissible for non-construction contracts.

E. Grant Funded Projects

For projects that are funded in whole or in part through the use of grant funds, the using agency shall comply with the Grants Policy and Procedure (2320.1). In the event a procurement method other than an Invitation for Bid or Request for Proposal is necessary, the using agency shall obtain prior approval from the grantor to utilize that method.

Grant funded projects that exceed \$100,000 should be procured through a formal competitive procurement process. For grant funded projects that are \$150,000 or less, in addition to any formal solicitation procedure used as set forth in City Policy and Procedure, quotes may be obtained in compliance with the federal simplified acquisition threshold.

1. Records

The project file maintained by the Procurement and Contracts Division shall include the solicitation and supporting documents including, but not limited to:

- a. the specifications and scope of work;
- b. the notification of solicitation (legal advertisements);
- c. evaluation criteria (if applicable), meeting minutes (if applicable), and addenda (if any);
- d. Council Agenda (if required);
- e. contract and/or task orders;
- f. a copy of any required certificates of insurance;
- g. the rationale for the method of procurement;
- h. the selection of contract type;
- i. the basis for contractor selection or rejection;
- j. the basis for the contract price and payment method; and
- k. other relevant documents supporting the analysis and negotiation of the contract.

2. Ethics

In procuring and administering construction services funded by state or federal grants, Procurement and the using agency shall comply with the City's ethics policies, including but not limited to the City's policy and procedure on grants (Policy and Procedure 2320.1) and the conflict of interest provisions contained therein. In addition, with respect to grants funded by the United States Department of Transportation, directly or through the State of Florida, the City shall comply with the requirements of 23 CFR § 1.33 regarding conflicts of interest, if applicable to such grants.

F. Construction Advertisement Requirements

In the procurement of construction services, the following advertising requirements shall be followed in accordance with Florida Statutes Section 255.0525, as may be amended from time to time.

1. The solicitation of competitive bids or proposals for projects estimated to cost more than \$200,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference.
2. The solicitation of competitive bids or proposals for projects estimated to cost more than \$500,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference.
3. Grant funded projects will also be advertised in accordance with the grant requirements.

G. Contract Negotiations and Contract Extensions

1. Following City Council approval, negotiations, if applicable, will be conducted by the Public Works Director or designee, by delegation from the CPO.
2. The initial contract shall be executed by the CPO or designee after the contractor has executed the contract and submitted all required documents, including bonds.

H. Roles During Project Execution

1. The Procurement and Contracts Division shall have the following responsibilities:

- a. Maintaining the Procurement contract file documents and original contracts;
 - b. Monitoring insurance and bond requirements;
 - c. Managing of contract modification execution;
 - d. Assembling contractor performance/evaluation reports; and
 - e. Facilitating contractor/City dispute resolution.
2. The using agency shall have the following responsibilities:
- a. Management of the project by the using agency's project manager responsible for the construction project or consultants working on behalf of the using agency during the construction period;
 - b. Submitting contract modification and change order requests with backup documents to the CPO or designee for execution;
 - c. Verifying and certifying that payment applications (invoices) are correct and consistent with the contract pricing, and submitting those documents for payment in a timely manner;
 - d. Confirming that the Contractor is performing in accordance with contract provisions;
 - e. Ensuring that all work is inspected according to City policy during the construction period; and
 - f. Performing project closeout activities upon the completion of work, and ensuring all disputes have been resolved and that all inspections have been performed.

:5 FORMS:

None.

:6 COMMITTEE RESPONSIBILITIES:

None.

:7 REFERENCE:

Florida Statutes Chapters 287.055; 255.20; 255.103; 255.0525 and City Code Chapter 7; this policy adopted by City Council December 19, 2012, Item A-3; amended by City Council January 28, 2013, Item A-3. (Superseding former policy section #133.5)

:8 EFFECTIVE DATE:

This procedure is amended effective January 13, 2013.