

Ordinance No. 04-18

ORDINANCE:

To Amend Chapter 17 of the Rockville City Code entitled "Purchasing" so as to change the title to "Procurement," to generally amend the provisions of Chapter 17, and to implement some of the recommendations of the City of Rockville Purchasing Study

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, that Chapter 17 of the Rockville City Code entitled "Purchasing" be amended so as to change the title to "Procurement," to generally amend the provisions of Chapter 17, and to implement some of the recommendations of the City of Rockville Purchasing Study to read as follows:

Chapter 17 - PROCUREMENT~~PURCHASING~~

ARTICLE I. - GENERAL PROVISIONS

DIVISION 1. - PURPOSES, CONSTRUCTION AND APPLICATION

Sec. 17-1. - Purposes.

The purposes of this chapter are to provide for an efficient, cost-effective and equitable system of public ~~[[purchasing]]~~ procurement by the City; to obtain the maximum purchasing value of public funds in procurement; to provide for a procurement system of quality and integrity; to provide for selling surplus goods in a manner which is efficient and equitable, and yields the highest sales price; and to permit the continued development of procurement policies and practices.

Sec. 17-2. - Interpretation; singular-plural/gender references.

- (a) This chapter shall be construed and applied to promote the stated purposes.
- (b) Unless the context requires otherwise:
 - (1) Words in the singular number include the plural, and those in the plural include the singular; and
 - (2) Words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

Sec. 17-3. - Scope.

- (a) Except as otherwise provided, this chapter applies to every disposition for value or expenditure of public funds by the City for public ~~[[purchasing]]~~ procurement irrespective of its source.
- (b) When the procurement or disposition involves Federal assistance or contract funds or is subject to Federal regulations, the procurement or disposition shall be conducted in accordance with any applicable mandatory Federal law or regulation which is not reflected in this chapter.
- (c) Nothing in this chapter shall be construed as prohibiting or limiting the council's right to make appointments under the City's Charter or to authorize any procurement it deems to be in the best interest of the City, or the City's right to employ its own personnel for the construction or reconstruction of public improvements or for any other purpose without competitive solicitation.

Sec. 17-4. - Severability.

If any provision of this chapter or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

DIVISION 2. - DEFINITIONS

Sec. 17-16. - Definitions.

The terms defined in this section shall have the meanings set forth below whenever they appear in this chapter unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular provision.

Awarding authority means the person or entity within the City authorized to award a contract.

Bid means an offer, in writing, to furnish goods, services, insurance or construction in conformity with the specifications, delivery terms and conditions or other requirements included in the invitation for bids or an offer to purchase property pursuant to Division 2 of Article III of this chapter.

Brand name specification means a specification by manufacturers' names or catalogue numbers.

Brand name or equal specification means a brand name specification to describe the standard of quality, performance, and other characteristics needed to meet City requirements, and which provides for the submission of equivalent products.

Business means any corporation, partnership, firm, individual, sole proprietorship, joint venture, association, or any other private legal entity through which business is conducted.

Change order means a written order signed and issued by the purchasing agent directing the contractor to make changes which the contract authorizes the City to order without the consent of the contractor.

City means the Mayor and Council of Rockville, otherwise known as the City of Rockville.

City Manager means the City Manager of Rockville or the City Manager's designee.

Competitive sealed bid means a method of procurement in which a supply, service, insurance, or construction item is defined in a list of specifications; the specifications are included in an Invitation for Bids; the bids are received by a specified time in sealed envelopes; an award is made to the lowest responsible bidder meeting all specifications, and cost is objectively measurable as defined in the specifications.

Competitive sealed proposal means a method of procurement in which a supply, service, insurance, or construction item is defined in a list of specifications; the specifications are included in a Request for Proposals (RFP); proposals are received by a specified time in sealed envelopes; and an award is made to the proposer most closely meeting specifications as determined by an evaluation that uses a predetermined and published set of evaluation criteria. Cost is one (1) criterion among others, all of which may be assigned specific weights.

Confidential information means any information which is available to an employee only because of the employee's status as an employee of this City and is not a matter of public knowledge or available to the public on request.

Construction means the erection, alteration, repair, improvement, or demolition of any public structure or building, or other public improvements of any kind, including any draining, dredging, excavation, grading or similar work upon real property. "Construction" does not include the routine operation, routine repair or routine maintenance of existing public facilities.

Contract means any City agreement, regardless of form or title, whether formal or informal, for the procurement or disposition of goods, services, insurance, or construction.

Contract file means a file maintained by the purchasing agent containing all determinations and other written records pertaining to any solicitation, award, or performance of a contract.

Contract modification means any written alteration in specifications, delivery, period of performance, price, quantity, or other provision of an existing contract whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract.

Contractor means any person having a contract with the City.

Council means the Mayor and Councilmembers of Rockville which is the legislative body of the City.

Electronic means the electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Environmentally preferable ~~[[purchasing]]~~ procurement means the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose, based on the raw materials, manufacturing, packaging, distribution, use, reuse, operation, maintenance, and disposal of the goods or services.

Formal contract means a written contract for procurements exceeding thirty thousand dollars (\$30,000.00) and signed by the City Manager and the contractor.

Formal Solicitation requires a bid/proposal be submitted in sealed envelope and in conformance with a prescribed format to be opened in public at a specified date and time.

Goods means supplies, materials, equipment, and all tangible property, except real property.

Informal solicitation means a competitive bid, price quotation, or proposal for goods or services that is conveyed by letter, fax, e-mail, or other manner that does not require a formal sealed bid or proposal.

Informality means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not materially affect the price, quality, quantity or delivery schedule for the goods, services, insurance, or construction being procured.

Informal contract means a contract for procurement not exceeding thirty thousand dollars (\$30,000.00).

Kickbacks means any money, fee, commission, credit, gift, or compensation of any kind which is provided directly or indirectly to a prime contractor, a prime contractor employee, a subcontractor, a subcontractor employee, a public employee, or other person for the purpose of obtaining or rewarding favorable treatment in the award of a prime contract or a subcontract in connection with a contract awarded by the City.

Life-Cycle Cost means the comprehensive accounting of the total cost of a product including procurement, initial cost, energy and operational cost, maintenance, longevity of service and disposal.

Local business means a business enterprise, including but not limited to a sole proprietorship, partnership, corporation, or limited liability company which (i) has a physical business address located within the corporate limits of the City from which the vendor operates or performs business on a day-to-day basis; and (ii) for the most recent tax year, has paid any real property or personal property tax due to the City. Post office boxes, or their equivalent, shall not be used for the purpose of establishing a physical address within the City.

Person means an individual, association, firm, partnership, corporation, government agency, or other entity, but does not include the City government.

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, insurance, or construction. It also includes all functions that pertain to the obtaining of any supply, service, insurance, or construction, including the description

of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Professional services means services performed by a person whose specialized knowledge and academic preparation have led the person to be a recognized professional within their vocation. These services include, but are not limited to, the practice of accounting, architecture, land surveying, landscape architecture, dentistry, medicine, optometry, pharmacy, actuarial services, professional engineering, property appraisals, consulting, and such other services that are customarily negotiated because the individuality of those services do not lend themselves to a fixed price bid.

Proposal means an offer to supply goods or insurance or perform services, or to purchase goods to be disposed, in response to a request for proposals by the City where competitive sealed proposals or negotiations will be used rather than the competitive bid process.

Public entity means any Federal, State or local government, agency, committee, commission, board, institution, or political subdivision created by Federal, State or local law to exercise some sovereign power or to perform some governmental duty.

Public notice means notice of a procurement solicitation given in a manner reasonably calculated to provide notice to persons interested in the solicitation. At a minimum, such notice shall include posting notice of all pending procurements on a City website maintained for that purpose. Such notice may, but need not necessarily, include publication in a newspaper of general circulation, electronic mailing lists, and web sites maintained for that purpose.

Purchase order means a type of contract issued by the City not requiring countersignature by the contractor.

Purchasing agent means the person designated as purchasing agent pursuant to section 17-21 of this chapter. The term shall also include any person designated pursuant to section 17-24 of this chapter by the purchasing agent to perform one or more functions of the purchasing agent.

Request for Proposals (RFP) means all documents, whether attached or incorporated by reference, used for soliciting proposals.

Requirements contract means a contract whereby the City agrees to purchase and the contractor agrees to sell all the goods of a designated type which the City may require, without specifying in the contract an exact quantity.

Responsible bidder or offeror means a person that has the capability, in all respects, to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment and credit which will assure good faith performance.

Responsive bidder means a bidder that has submitted a bid which conforms in all material respects to the Invitation for Bids.

Services means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the

required performance. This term shall not include employment agreements or collective bargaining agreements.

Specification means any description of the physical or functional characteristics, or of the nature, of a supply, service, insurance or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, insurance, or construction item for delivery.

Split [[Purchasing]] Procurement means when a recognized need for a certain volume of goods, services, insurance, or construction is purposefully split into smaller increments in order to evade any requirement of this chapter.

Surplus goods means all goods which have been determined by the purchasing agent to have become surplus, obsolete or unusable.

Tie bids are responsive bids from responsible bidders that are identical in price, terms and conditions and which meet all the requirements and evaluation criteria set forth in the invitation for bids.

Using department means any City department, office, or agency that utilizes any goods, services, insurance, or construction procured under this chapter.

Written or In Writing includes information that is electronically transmitted and/or stored.

DIVISION 3. - PURCHASING AGENT

Sec. 17-21. - Establishment and appointment.

The [[purchasing]] procurement system shall operate under the direction and supervision of a purchasing agent within the City Manager's Department. The City Manager may exercise some or all of the duties of the purchasing agent.

Sec. 17-22. - Authority and duties of the purchasing agent.

Except as otherwise provided in this chapter, the purchasing agent shall have the authority and responsibility to:

- (1) Procure or supervise the procurement of all goods, services, insurance, and construction needed by the City;
- (2) Sell, trade or otherwise dispose of surplus goods belonging to the City;
- (3) Exercise general supervision and control over all inventories of supplies belonging to the City;
- (4) Develop procedures, standards, and policies, and forms, including but not limited to a Purchasing Manual Procurement Guide, as may be necessary for the effective implementation of this chapter;
- (5) Conduct pre-bid or pre-proposal conferences where appropriate;
- (6) Make written recommendations for the award of formal contracts;

- (7) Keep informed of current developments in the field of ~~[[purchasing]]~~ procurement, prices, market conditions, and new products;
- (8) Assure that sufficient money has been appropriated to cover the cost of all purchases or contracts;
- (9) Establish and maintain programs for the inspection, testing, and acceptance of goods, services, insurance, and construction;
- (10) Maintain contract files associated with procurements;
- (11) Change specifications and terminate solicitations;
- (12) Make determinations of bidder and offeror responsibility;
- (13) Require bonds, insurance, and other forms of protection for the City in connection with the procurement process;
- (14) Ensure compliance with this chapter by reviewing and monitoring procurements conducted by any designee, department, or employee delegated authority under section 17-24;
- (15) Make all written determinations required by this chapter, except as may otherwise be provided by this chapter; and
- (16) Perform other functions and duties as required by this chapter or as may be assigned.

Sec. 17-23. - City procurement records.

All determinations and other written records pertaining to any formal solicitation, informal solicitation, award, or performance of a contract shall be maintained for the City in a contract file. All records shall be maintained for such time as required by State law or regulation but in no event less than three (3) years or according to retention schedules approved by the State.

Sec. 17-24. - Delegation of authority by purchasing agent.

The purchasing agent may establish procedures and standards for delegating authority to purchase certain supplies, services, insurance, or construction items, and to make determinations required by this chapter to other City employees or public entities, if such delegation is deemed appropriate for the effective procurement of those items.

Sec. 17-25. – Certification of Funds

Every contract, contract modification, change order, or adjustment in contract price is subject to prior written approval (except for emergency procurements) by the responsible department head and certification by the division of budget as to the availability of funds and the effect of the modification, change, or adjustment on a project budget or the total cost for goods, services, or construction. The purchasing agent may not proceed with contract modification, change, or adjustment until sufficient funds are

available, or the scope of the project is adjusted to permit its completion within the project budget.

ARTICLE II. - CONTRACT FORMATION

Sec. 17-36. - Types of contracts.

Subject to the requirements of this article, any type of contract that is appropriate to the procurement and that will promote the best interests of the City may be used.

Sec. 17-37. - Written contracts required.

- (a) All contracts involving more than three thousand dollars (\$3,000.00) shall be in writing.
- (b) For the routine purchase of goods, services, insurance, and construction, a purchase order issued by the purchasing agent shall satisfy the requirement for a written contract.

Sec. 17-38. - Formal contracts.

Except for the purchase of goods and equipment, formal written contracts signed by the City Manager and the contractor shall be required for procurements exceeding thirty thousand dollars (\$30,000.00), including requirements contracts estimated to exceed thirty thousand dollars (\$30,000.00) in any given fiscal year.

Sec. 17-39. - Awarding authority.

- (a) All contracts involving more than one hundred thousand dollars (\$100,000.00) shall be awarded by the Council, except as may be specifically provided in this chapter.
- (b) Except for those contracts awarded by the Council and when emergency procurements are necessary, all formal two-party contracts shall be awarded by the City Manager.
- (c) All other contracts shall be awarded by, or under the supervision of, the purchasing agent, subject to review by the City Manager.

Sec. 17-40. - Contract modifications; change orders; price adjustments.

(a) The following contract changes (including contract modifications, change orders, and price adjustment) must be approved by the Council:

- (1) Changes to any contract not originally awarded by the Council when the cumulative value of the original contract and all changes to the contract exceed one hundred thousand dollars (\$100,000.00);
- (2) Changes to any contract originally awarded, or any contract previously modified, by the Council when the cumulative value of all changes exceed both

- a. One hundred thousand dollars (\$100,000.00), and
- b. Ten percent (10%) of the original contract.

(b) Changes to any contract, including contract modifications, change orders, and price adjustments must be approved in accordance with the original contract, in writing, by the City Manager or designee, when the cumulative value of the original contract and all changes to the contract exceed thirty thousand dollars (\$30,000.00)

Sec. 17-41. - Multi-term contracts.

A contract for goods, insurance, or services may be entered into for any period of time deemed to be in the best interest of the City provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled with no penalty to the City.

Sec. 17-42. - ~~Voidable contracts~~ Unauthorized Purchases-Voidable Contracts.

If any employee or official of the City purchases or contracts for supplies, services, insurance, or construction in a manner contrary to the provisions of this chapter such purchase or contract is voidable by the City. However, when, in the opinion of the City Manager, the contracting violation occurred through no fault of the contractor, the contractor may be reimbursed on a quantum meruit basis for goods, services, or insurance furnished or work performed in good faith, in such amount as may be determined by the City Manager. The City Manager may ratify unauthorized purchases. All ratifications for unauthorized purchases shall be in writing and include a justification for the ratification.

ARTICLE III. - SOURCE SELECTION

DIVISION 1. - GENERAL

Sec. 17-51. - In general.

Notwithstanding any provision of this chapter, the Council may approve any method of procurement that it deems to be in the best interest of the City.

DIVISION 2. - COMPETITIVE PROCUREMENT

Sec. 17-61. - Formal solicitation—Competitive sealed bidding (Invitation for Bids-IFB).

- (a) Conditions for use. Formal contracts shall be awarded by competitive sealed bidding, except as otherwise provided in this chapter.

- (b) Invitation for bids. An Invitation for Bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- (c) Public notice. Public notice of the Invitation for Bids shall be given at least fifteen (15) days prior to the date set forth therein for the opening of bids, unless the purchasing agent determines, in writing, that circumstances require a shorter notice period.
- (d) Bid opening. Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as is deemed appropriate together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection. A tabulation of all bids received shall be made available to the public after the bid opening.
- (e) Late bids. Late bids will not be accepted.
- (f) Bid acceptance and evaluation. Except as authorized in this article, bids shall be accepted without alteration or correction. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in a bid evaluation that are not set forth in the Invitation for Bids.
- (g) Waiver of minor informality or immaterial bid defect. The purchasing agent may waive a minor informality or immaterial bid defect if such waiver is determined to be in the best interest of the City. A minor informality means a bid requirement that is merely a matter of form or is an immaterial provision in the solicitation. A bid defect is immaterial when the significance of the defect is negligible when contrasted with the total cost or scope of the procurement. The decision of the purchasing agent with respect to whether a requirement is a minor informality or whether a bid defect is immaterial is final and may not be challenged by a bidder.
- (h) Correction or withdrawal of bids; cancellation of awards.
 - (1) Where a mistake is discovered before bid opening, the bid may be modified or withdrawn by written, telegraphic, or electronic notice received by the purchasing agent prior to the time set for bid opening.
 - (2) Where a mistake is discovered after bid opening but prior to contract award, a bid:
 - a. May be corrected where the error made and the intended bid price can be determined solely from the bid documents submitted, and the purchasing agent determines that the mistake was inadvertent and bona fide;
 - b. May be withdrawn where the bid was submitted in good faith and the bid price is substantially lower than the other bids due solely to a clerical mistake therein as opposed to a judgment mistake and the mistake was due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown

by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid.

- (3) Where an error is discovered in the successful bid after the award of the contract and the conditions of subsection (h)(2)a. or (h)(2)b. of this section are satisfied, the bid may be corrected or withdrawn, respectively, and the contract amended or rescinded as appropriate, provided that no bid correction or contract amendment shall be permitted that would cause the contract price to exceed the next lowest bid.
- (4) No bid may be withdrawn or award canceled when the result would be prejudicial to the interests of the City or fair competition.
- (5) No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or business to whom the contract is awarded, or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
- (6) If a bid is withdrawn or award canceled under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
- (7) Nothing herein shall prevent the City from rejecting all bids if deemed to be in the interest of the City or fair competition.
- (8) All decisions to permit the correction or withdrawal of bids or cancellation of an award based upon bid mistakes, shall be supported by a written determination made by purchasing agent.
- (i) Contract award. Subject to the provisions set forth herein, contracts shall be awarded to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids:
 - (1) When the terms and conditions of the Invitation for Bids provide that multiple awards may be made, awards may be made to more than one bidder.
 - (2) If the bid from the lowest responsible bidder exceeds available funds or is deemed excessive, the purchasing agent may (a) negotiate with the lowest responsible bidder to obtain an acceptable contract price, and if unsuccessful, may thereafter enter into negotiations with the next lowest bidder; or (b) reject all bids and solicit new bids, with or without revised specifications.
 - (3) When the contract is not awarded to the lowest bidder, a written statement of the reasons for awarding the contract to another bidder shall be prepared by the purchasing agent and maintained in the contract file.
- (j) Tie bids. In the case of a tie bid between a local business and a non-local business award shall be made to the local business. If tie bids are received from two (2) or more local firms or from two (2) or more non-local firms, a drawing shall be conducted. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet. The City reserves the right to reject all bids and rebid the contract.

- (k) Multi-step sealed bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have qualified under the criteria set forth in the first solicitation.
- (l) Single bid. Where only a single bid is received and the price is not acceptable to the City, the City may either negotiate with the bidder for a more acceptable price or reject the bid. If the bid is rejected, the City may re-solicit for bids or may utilize any other procurement method reasonably designed to obtain the best price.
- (m) Contract award based on "best value." Notwithstanding subsection 17-61(i), a contract may be awarded on best value analysis provided that the criteria for analysis was included in the invitation for bids. The contract shall be awarded to the responsive, responsible bidder whose bid is determined to be the best value to the City and that conforms in all material respects to requirements and criteria set forth in the invitation for bids.
- (n) Prior to contract award, a notice of intent to award shall be made available to the public.

Sec. 17-62. - Formal solicitation—Competitive sealed proposals (Request for Proposals-RFP).

- (a) Conditions for use. Formal contracts may be awarded by competitive sealed proposals where the purchasing agent, in consultation with the using department, determines in writing, that competitive sealed bidding is either not practicable or not advantageous to the City. The writing shall identify the basis for this determination.
- (b) Written justification. ~~A written justification for utilizing sealed proposals shall be submitted to the Awarding Authority before any resulting contract is awarded, except that a~~ No written justification is required for utilizing competitive sealed proposals to procure:
 - (1) Professional services.
 - (2) Insurance.
 - (3) Design-build projects.
- (c) Request for Proposal (RFP); evaluating factors. The purchasing agent shall issue a written Request for Proposal (RFP) indicating in general terms that which is sought to be procured, specifying the relative importance of price and other factors which will be used in evaluating the proposal, and applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.
- (d) Public notice. Public notice of the RFP shall be given in the same manner as provided in section 17-61(c).
- (e) Receipt and opening of proposals. There shall be no public opening of proposals and no proposal shall be otherwise handled so as to permit disclosure of the identity of

any offeror or the contents of any proposal to competing offerors during the evaluation process. The proposals, except for information identified by the offeror as proprietary, shall be open for public inspection after contract award.

- (f) Late proposals. Late proposals shall be accepted only when it is established to the satisfaction of the purchasing agent that the lateness was due to unexpected weather or traffic conditions, or other conditions beyond the control of the offeror. The purchasing agent may require documentation and/or other proof of the condition resulting in the late proposal. No late proposal shall be accepted when to do so would confer an advantage on the late offeror or otherwise be adverse to fair competition. All decisions to accept late proposals shall be supported by a written determination made by the purchasing agent.
- (g) Discussion with Responsible Offerors, Negotiation and Revisions to Proposals. If provided in the RFP, the purchasing agent or along with the using department may conduct discussions with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. The City may have multiple discussions/negotiations with multiple offerors concurrently or sequentially. Offerors shall then be afforded an opportunity to revise their proposals prior to award for the purpose of obtaining best and final proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- ~~(h) Ranking of proposals; negotiation; award. The purchasing agent in consultation with the using department shall evaluate the final proposals based on criteria contained in the RFP and rank in order of preference the most qualified offerors. The purchasing agent shall negotiate a contract with the top ranked offeror. If the purchasing agent is unable to negotiate a satisfactory contract with the top ranked offeror the purchasing agent may thereafter enter into negotiations with the next highest ranked offeror and, if unsuccessful, with each successive next highest ranked offeror. The contract shall be awarded to the highest ranked offeror with whom a satisfactory contract has been negotiated. If a contract satisfactory to the City cannot be reached, negotiations may be terminated and the solicitation process may start over. If, at any time during the process, it is determined in writing that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.~~
- (h) Award. After negotiations have been conducted with selected offerors, the City shall select the offeror which, in its opinion, has offered the best proposal, and shall award the contract to that offeror. The determination for award shall be made a part of the contract file.
- (i) Multi-step Method. A multi-step method may be used in the evaluation process with qualifications, technical proposals and price proposals being obtained and evaluated either separately or concurrently.

(j)(i) Multiple awards. Multiple awards may be made under a single RFP if the RFP provides for multiple awards.

(k) Prior to contract award, a notice of intent to award shall be made available to the public.

Sec. 17-63. - Informal solicitation.

- (a) Any purchase not exceeding thirty thousand dollars (\$30,000.00) may be made in accordance with informal procurement procedures established by the purchasing agent that provide for informal solicitation of bids, quotations, proposals or offers.
- (b) The award shall be made to the lowest responsive and responsible supplier. The name of the person submitting a bid, quotation, proposal, or offer and the date and amount of each bid, quotation, or offer shall be recorded and maintained as part of the contract file.
- (c) When the contract is not awarded to the lowest supplier, a written statement of the reasons for awarding the contract to another supplier shall be prepared by the purchasing agent and maintained in the contract file.

Sec. 17-64. - Request for expressions of interest.

- (a) Conditions of use. A request for expressions of interest may be used to:
 - (1) Obtain essential procurement information needed to prepare a subsequent solicitation;
 - (2) Develop a ready source of potential offerors who can respond to a subsequent solicitation; or
 - (3) Resolve technological or programmatic questions relative to how the City requirements can best be supplied.
- (b) Public notice. As determined by the purchasing agent, public notice of the request for expressions of interest shall be given in the same manner provided in section 17-61(c).
- (c) Evaluation. A request for expressions of interest must contain evaluation factors and an explanation of how the list of offerors who will be eligible to receive a subsequent solicitation will be determined.
- (d) Selection Committee. A selection committee must review and evaluate the proposals and recommend a list of offerors who will be eligible to receive a subsequent solicitation.
- (e) Subsequent solicitation. A request for expressions of interest does not directly lead to the award of a contract. Only those offerors determined to be eligible to receive a subsequent solicitation may participate in any subsequent solicitation. A subsequent

solicitation may be accomplished through competitive sealed bidding, competitive sealed proposals, or an informal solicitation. Proposals received under a request for expressions of interest may form a basis for justifying a non-competitive contract award.

Sec. 17-65. - Unsolicited proposals.

- (a) Processing of Unsolicited Proposals. If the City receives a proposal, other than one submitted in response to a solicitation, the purchasing agent shall forward the proposal to the using department.
- (b) Conditions for Use. To be considered for evaluation, an unsolicited proposal:
 - (1) Shall be in writing;
 - (2) Shall be sufficiently detailed to allow a judgment to be made concerning the potential utility of the proposal to the City;
 - (3) Shall contain a novel or innovative concept, application, approach, or method or which demonstrates a novel capability of the offeror of the proposal;
- (c) Evaluation. The purchasing agent shall make a determination as to whether the proposal meets the requirements of section 17-65(b). The purchasing agent shall make a determination within thirty (30) days after receiving the unsolicited proposal. If the purchasing agent fails to make a determination within thirty (30) days as required, the unsolicited proposal shall be considered disapproved.

If the purchasing agent determines that the proposal does not meet the requirements of this section, a contract award shall not be made based on the unsolicited proposal.

- (d) Discussion with Responsible Offeror. The purchasing agent and the using department may conduct discussions with an offeror who submits a proposal for the purpose of clarification and to assure full understanding. An offeror shall be afforded an opportunity to revise their proposal prior to award.
- (e) Public notice before award. Not less than thirty (30) days before the execution and award of a contract based on an unsolicited proposal, the purchasing agent shall publish a notice of intent to award the contract on the City's website. If, during the 30-day period before contract award, a person files a written petition with the City for reconsideration of an approval determination, the awarding authority shall reconsider and make written findings affirming or reversing the approval.
- (f) Contract Award. Subject to the provisions set forth herein, award of an unsolicited proposal shall be made in accordance with section 17-39.
- (g) Confidentiality. The proposal, except for information identified by the offeror as proprietary, shall be open for public inspection after contract award.

Sec. 17-66. - Right to cancel solicitations; right to reject bids, proposals and offers.

- (a) The purchasing agent may, when in the best interest of the City, cancel an Invitation for Bids, a Request for Proposals, or other solicitation. The reasons therefor shall be made a part of the contract file.
- (b) Any or all bids, proposals, or offers may be rejected in whole or in part by the Awarding Authority.

Sec. 17-67. - Responsibility of bidders and offerors.

- (a) Determination of responsibility. A determination shall be made as to the capability of the bidder or offeror to fully perform the contract requirements in all respects. Where competitive sealed bids or competitive sealed proposals are used any determination of nonresponsibility shall be made in writing.
- (b) Factors to consider. The following factors shall be considered in determining whether a bidder or offeror is "responsible:"
 - (1) Price and other criteria set forth in the solicitation documents;
 - (2) The ability, capacity, skill and financial resources of the bidder or offeror to perform the contract or provide the service required within the time specified, without delay or interference;
 - (3) The character, integrity, reputation, judgment, experience, and efficiency of the bidder or offeror;
 - (4) The quality of performance of previous contracts or services;
 - (5) The previous and existing compliance by the bidder or offeror with laws and ordinances relating to a contract with the City;
 - (6) The ability of the bidder or offeror to provide future maintenance and service for the use of the subject of the contract;
 - (7) Such other factors deemed relevant to the determination of nonresponsibility.
- (c) Presumed nonresponsibility. A bidder or offeror who has been disbarred or who is in default on payment of taxes, licenses, fees, fines, or other monies due the City, for whatever reason, shall be deemed to be nonresponsible.
- (d) Failure to provide information. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.
- (e) Nondisclosure of information.
 - (1) Confidential information furnished by a bidder or offeror pursuant to this section shall not be made public without the prior written consent of the bidder or offeror.
 - (2) The City shall not be required to disclose specific information received from references if such information was disclosed in confidence or if the disclosure of said information could affect the ability of the City to obtain future references.

- (f) Prequalification. Where a competitive procurement process is used, the purchasing agent may prequalify bidders or offerors to submit a bid or proposal based on the criteria for determining "responsibility" as set forth in this section and in the solicitation documents. Prequalification of a bidder or offeror shall not constitute a conclusive determination that a bidder or offeror is responsible, and such bidder or offeror may be rejected as non-responsible at any time on the basis of subsequently discovered information.

DIVISION 3. - COOPERATIVE PROCUREMENT

Sec. 17-71. - Cooperative procurement authorized.

- (a) The City may participate in, sponsor, conduct, or administer cooperative procurement agreements with one or more other public entities when the best interests of the City would be served thereby.
- (b) The City may contract with any contractor who offers goods, services, insurance, or construction on the same terms as provided other state or local governments or agencies thereof who have arrived at those terms through a competitive procurement procedure similar to the procedure used by the City.
- (c) Supporting justification and documentation of any analysis that was conducted shall be prepared and made a part of the contract file.

Sec. 17-72. - Contracting with public entities.

- (a) The City may contract directly with other public entities for goods or services when such goods or services were obtained through competitive procurement procedures.
- (b) The City may contract with any public entity to provide or receive any work or services of the type the City or such other public entity performs for its jurisdiction.
- (c) Supporting justification and documentation of any analysis that was conducted shall be prepared and made a part of the contract file.

Sec. 17-73. - Joint use of facilities.

The City may enter into agreements or memoranda of understanding with other public entities for the common use or lease of facilities upon terms agreed upon between the parties.

Sec. 17-74. - Supply of personnel, information, and technical services.

The City may enter into agreements or memoranda of understanding with other public entities for supplying or receiving personnel, information, or technical services.

DIVISION 4. - NON-COMPETITIVE PROCUREMENT METHODS

Sec. 17-81. - Small procurements.

Expenditures of not more than three thousand dollars (\$3,000.00) may be made by the using department without the prior approval of the purchasing agent in accordance with procedures governing small procurements established by the purchasing agent.

Sec. 17-82. - Sole source procurement.

- (a) A contract of any value may be awarded without competition, and negotiations may be conducted as appropriate, when the Awarding Authority determines, based on a good faith review of available sources, that
 - (1) There is only one (1) source practicably available for the required supply, service, insurance, or construction item; or
 - (2) The availability of used machinery or equipment is limited, such as to make competitive procurement impractical, and that a delay in procurement would be detrimental to the City; or
 - (3) Competition is precluded due to proprietary information, patents, copyrights, or similar circumstances.
- (b) A record of sole source procurements shall be maintained that lists each contractor's name, the amount and type of each contract, a listing of the item procured under each contract and the reasons justifying the sole source procurement.
- (c) The purchasing agent shall submit to the City Manager an annual report of all sole source procurements in excess of thirty thousand dollars (\$30,000.00).
- (d) The City Manager shall provide to the Mayor and Council annually a list of all sole source procurements in excess of thirty thousand dollars (\$30,000.00).

Sec. 17-83. - Phased projects or services.

When the appropriate Awarding Authority determines that a project or a service of a complex nature carried out in phases makes it not feasible to continue subsequent phases with other than the first phase source, contracts for subsequent phases may be awarded to the first phase source without competition.

Sec. 17-84. - Emergency procurements.

- (a) The purchasing agent may authorize emergency procurements of supplies, services, insurance, or construction of any value without competition under any of the following circumstances:
 - (1) Where there exists a threat to public health, welfare or safety;
 - (2) Where delay would significantly injure the City financially or otherwise;

- (3) To prevent a breakdown in machinery and/or threatened termination of essential services (including maintenance and repair of essential office equipment);
 - (4) To prevent spoilage;
 - (5) Any other circumstance in which goods, services, insurance, or construction are needed for immediate use;
- (b) Emergency procurements shall be made with such competition as is practical under the circumstances.
- (c) As soon as practicable, a record of each emergency procurement shall be made containing the following:
- (1) A written explanation of the circumstances of the emergency;
 - (2) A tabulation of bids or quotes received, if any;
 - (3) The contractor's name, the amount and type of contract, a listing of the items procured under the contract.
- (d) To the extent feasible under the circumstances, the purchasing agent shall obtain the approval of the City Manager for emergency procurement in excess of thirty thousand dollars (\$30,000.00).
- (e) The purchasing agent shall submit to the City Manager an annual report listing of all emergency purchases in excess of thirty thousand dollars (\$30,000.00).
- (f) The Council shall be notified of emergency procurements exceeding one hundred thousand dollars (\$100,000.00) as soon as practicable.
- (g) The City Manager shall provide to the Mayor and Council annually a list of all emergency procurements in excess of thirty thousand dollars (\$30,000.00).

Sec. 17-85. - Related construction projects.

Contracts may be awarded without competition for construction of City improvements if:

- (1) City improvements consist of a portion of a single structure or complex of related structures containing both City and private improvements or improvements of another government; and
- (2) The party with whom the City contracts for construction of the City improvements is also constructing the private or other governmental improvements within the single structure or complex of related structures; and
- (3) There is a written determination that this method of procurement is in the best interests of the City.

Sec. 17-86. - Contract extensions.

Unless otherwise provided in the solicitation documents, an extension of a contract may be awarded without competition when a written finding is made that circumstances warrant the extension of an existing contract, provided the extension is for not more than one year and does not exceed twenty-five percent (25%) of the total original price.

Sec. 17-87. - Exemptions.

(a) The following are exempt from competitive procurement:

- (1) Professional services and other services associated with actual or potential litigation, administrative, or regulatory proceedings.
- (2) Professional services not exceeding five thousand dollars (\$5,000.00). No contractor or other person may be a party to, or beneficiary of, more than one contract awarded pursuant to this provision within any given fiscal year.
- (3) Purchases for water, sewer, electric, ~~[[telephone,]]~~ postage or other utility services and motor vehicle license plates.
- (4) Sale, rental, or purchases of land and improvements on the land, and rights-of-way.
- (5) Grants or contracts with other public bodies.
- (6) Goods purchased from a public auction sale, including an internet auction, provided that a written determination is made in advance by the purchasing agent that such purchase is in the best interest of the City.
- (7) Purchases for special police work when the Chief of Police certifies to the purchasing agent that items are needed for undercover police operations.
- (8) Purchases of goods and personal services for direct use by individual recipients of services under the public assistance programs administered by the City.
- ~~[[(9) Purchases from nonprofit sheltered workshops serving the handicapped.]]~~
- ~~[[(10)]]~~ (9) Expenditures for travel, subscription, courses, seminars, and conventions, membership dues and subscription fees.
- ~~[[(11)]]~~ (10) Advertising.
- ~~[[(12)]]~~ (11) Procurement of temporary employment services.
- ~~[[(13)]]~~ (11) Procurement of entertainment, instructional, facilitating, or educational services for City officials, staff, or residents, or for social, cultural, or recreational programs or events offered or sponsored by the City.
- ~~[[(14)]]~~ (12) Acquisition of works of art for public display.
- ~~[[(15)]]~~ (13) Employment contracts and employee relocation costs.
- ~~[[(16)]]~~ (14) Sponsorship agreements.
- ~~(17) Lobbying services.~~
- ~~(18)~~ (17) On-going proprietary software maintenance or support.

(b) Although procurements referred to in section 17-87 are exempt from competition, the provisions of sections 17-37, 17-38 and 17-39 apply. [[When applicable, s]] Supporting justification and documentation of any analysis that was conducted shall be prepared and made a part of the contract file. The City Manager may waive these requirements. Justification for the waiver shall be made a part of the contract file. The City Manager

shall provide to the Mayor and Council annually a list of all waivers approved by the City Manager.

Sec. 17-88. - Special procurements.

- (a) The Awarding Authority may authorize non-competitive procurement methods, upon a written determination that a unique or unusual circumstance exists that makes competitive procurement contrary to the City's interest.
- (b) A record of special procurements shall be maintained that lists each contractor's name, the amount and type of each contract, a listing of the item procured under each contract and the reasons justifying the special procurement.

Sec. 17-89. - Environmentally preferable [[purchasing]] procurement.

The purchasing agent will develop an environmentally preferable [[purchasing]] procurement policy which shall provide preference, to the greatest extent practicable, to products and services that will enhance and protect the environment, protect the welfare of workers, residents, and the larger global community, and represent the best overall value to the City.

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Sec. 17-154. - Split [[purchasing]] procurement/sale prohibited.

No purchase or sale shall be divided for the purpose of evading the provisions of this chapter.

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ARTICLE VII. - PROTESTS AND DEBARMENT

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Sec. 17-173. - Contract disputes.

- (a) Contractors must first attempt to resolve all contract disputes with the using department, and thereafter with the purchasing agent.
- (b) Unresolved contract disputes may be submitted to the City Manager for a decision. All disputes must be submitted in writing with supporting documentation.
- (c) The City Manager shall conduct, or cause to be conducted, such hearing as deemed appropriate under the circumstances and shall issue a decision in writing, which decision shall be furnished to the contractor. At the request of a contractor the City Manager shall retain an independent hearing officer to conduct a due process evidentiary hearing and to make a recommendation to the City Manager. The contractor and the City shall share equally the cost of the hearing officer's fee and all other expenses related to the hearing. Each party shall be responsible for all costs associated with the presentation of its side of the dispute.

(d) The City Manager's decision shall be final and binding.

Sec. 17-174. - Appeals from City Manager's decisions.

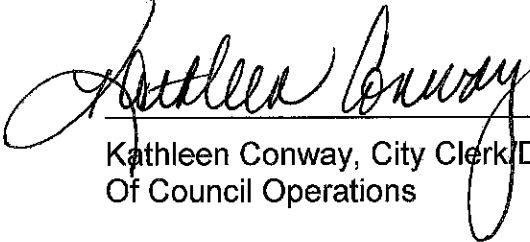
Any person aggrieved by a decision of the City Manager pursuant to this chapter may appeal such decision to the Circuit Court for Montgomery County in accordance with the provisions of the Maryland Rules governing administrative appeals, except that a contractor must request a hearing before an independent hearing officer prior to appealing the City Manager's decision in a contract dispute pursuant to section 17-174. 17-173. The aggrieved party and the City may appeal the decision of the Circuit Court to the Court of Special Appeals.

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NOTE: Underlining indicates material added
 ~~Strikethrough~~ indicates material deleted
 Asterisks * * * indicate material unchanged by this ordinance
 Double Underlining indicates material added after introduction
 [[Double brackets]] indicate material deleted after introduction

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I hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Mayor and Council at its meeting of February 5, 2018.



Kathleen Conway, City Clerk/Director
Of Council Operations