

Ordinance: 14-24

ORDINANCE: To amend certain subsections of Chapter 17 of the Rockville City Code entitled "Procurement" by amending certain definitions; increasing certain threshold financial amounts relating to categories of procurement; and deleting a provision relating to errors discovered after contract execution.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, that Chapter 17 of the Rockville City Code entitled "Procurement" be amended as follows:

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 or

electronically; 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 or electronically; 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 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~~ fifty thousand dollars (\$~~30~~50,000.00) and signed by the City Manager and the contractor.

Formal solicitation requires a bid/proposal be submitted electronically or in a sealed envelope and in conformance with a prescribed format.

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~~ fifty thousand dollars (\$~~30~~50,000.00).

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, unless otherwise required by this Chapter.

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 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.

Sec. 17-37. - Written contracts required.

(a) All contracts involving more than ~~three~~ ten thousand dollars (~~\$3~~10,000.00) 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. Where goods, services, insurance, or construction are warranted by the vendor or other entity, the purchase order shall contain information specifying the warranty and shall be counter-signed by the vendor.

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~~ fifty thousand dollars (~~\$3~~50,000.00), including requirements contracts estimated to exceed ~~thirty~~ fifty thousand dollars (~~\$30~~50,000.00) in any given fiscal year.

Sec. 17-39. - Awarding authority.

(a) All contracts involving more than ~~one~~ two-hundred and fifty thousand dollars (\$~~10~~250,000.00) 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.

(d) The City Manager shall annually report to Council regarding contracts awarded, and changes and modifications to contracts involving more than \$100,000.

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~~ two-hundred and fifty thousand dollars (\$~~10~~250,000.00);

(2) Changes to any contract originally awarded, ~~or any contract previously modified~~, by the Council when the cumulative value of all changes exceeds ~~both the greater of~~

a. ~~One~~ Two-hundred and fifty thousand dollars (\$~~10~~250,000.00), ~~and or~~

b. Ten percent (10%) of the original contract.

(3) Changes to any contract modified by Council where the cumulative value of all changes exceeds the greater of:

a. Two-hundred and fifty thousand dollars (\$250,000), or

b. Ten percent (10%) of the modified 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~~ fifty thousand dollars (\$~~30~~50,000.00).

~~(e) The City Manager shall annually provide a publicly available report relating to contract changes above \$250,000.00.~~

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

The Awarding Authority may enter into a ~~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. 17-61. - 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. Except as provided in [section 17-52](#), 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 ~~3~~) No bid may be withdrawn or award canceled when the result would be prejudicial to the interests of the City or fair competition.

(~~5~~ 4) 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 ~~5~~) 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 ~~6~~) Nothing herein shall prevent the City from rejecting all bids if deemed to be in the interest of the City or fair competition.

(~~8-7~~) 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. 17-63. - Informal solicitation.

- (a) Any purchase not exceeding ~~thirty~~ fifty thousand dollars (\$~~30~~50,000.00) 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.

Sec. 17-81. - Small procurements.

Expenditures of not more than ~~three ten thousand~~ dollars (\$~~310,000.00~~) 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. 17-84. - 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 fifty~~ thousand dollars (\$~~3050,000.00~~).

(e) The purchasing agent shall submit to the City Manager an annual report listing of all emergency purchases in excess of ~~thirty fifty~~ thousand dollars (\$~~3050,000.00~~).

(f) The Council shall be notified of emergency procurements exceeding ~~one two-hundred and fifty~~ thousand dollars (\$~~100250,000.00~~) 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~~ fifty thousand dollars (~~\$30~~50,000.00).

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, or other legal matters as determined to be reasonable and necessary by the City Attorney.

(2) Professional services not exceeding ~~five~~ ten thousand dollars (\$~~5~~10,000.00). 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, 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) Expenditures for travel, subscription, courses, seminars, and conventions, membership dues and subscription fees.

(10) Advertising.

(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.

(12) Acquisition of works of art, and conservation services related to existing City-owned art for public display.

(13) Employment contracts and employee relocation costs.

(14) Sponsorship agreements.

(15) Reserved.

(16) Reserved.

(17) On-going proprietary software maintenance or support.

(18) Purchases relating solely to and directly for elections.

(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. 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.

NOTE: Underlining indicates material added

~~Strikeouts~~ indicate material deleted

Double Underlining indicates material added after introduction

~~Double-Strikeouts~~ indicate material deleted after introduction

Asterisks * * * indicate material unchanged by this ordinance.

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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 September 16, 2024.


Sara Taylor-Ferrell, City Clerk, Director of
Council Operations