



PROCUREMENT PROCEDURE

SUBJECT: Selection of Professional Services

No. P-11

Effective: September 1, 1993

Revised: June 1, 2013

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Approved: Constance P. Sanchez

Date: 2-19-14

Constance P. Sanchez
Director of Financial Services

PURPOSE:

1. To establish a procedure for selecting highly qualified firms for necessary professional services.
2. To establish a procedure that complies with all applicable laws and regulations regarding the selection of professional services while maintaining the quality and integrity of the City's procurement of such services.

SCOPE:

Professional services (involving contracts requiring an expenditure of any amount, whether below or above the \$50,000 threshold) must be procured in accordance with this procedure, unless the City Manager or respective Assistant City Manager waives the procedure for a particular procurement. When the procurement involves the expenditure of federal funds, the selection of professional services must be conducted in accordance with any mandatory applicable federal laws and regulations. This procedure does not apply to joint procurement with other entities.

DEFINITION:

Subchapter A of Chapter 2254, Government Code, the Professional Services Procurement Act, provides as follows:

"Professional services" means services:

- (A) within the scope of the practice, as defined by state law, of:

- (i) accounting;
- (ii) architecture;
- (iii) landscape architecture;
- (iv) land surveying;
- (v) medicine;
- (vi) optometry;
- (vii) professional engineering;
- (viii) real estate appraising; or
- (ix) professional nursing; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) a certified public accountant;
- (ii) an architect;
- (iii) a landscape architect;
- (iv) a land surveyor;
- (v) a physician, including a surgeon;
- (vi) an optometrist;
- (vii) a professional engineer;
- (viii) a state certified or state licensed real estate appraiser; or
- (ix) a registered nurse.

In addition, the Attorney General has further clarified that the term professional services does not have a universal definition but generally comprehends labor and skill that is predominantly mental or intellectual rather than physical or manual; it no longer includes only providers of the services listed above, but also members of disciplines requiring special knowledge or attainment and a higher order of learning, skill and intelligence. The rationale is that with work involving specialized, technical or aesthetic judgment, considerations of cost yield to considerations of quality or competence.

GENERAL PROCEDURE:

Competitive Bids Prohibited

The City is prohibited from using competitive bidding procedures to obtain the services of architects, engineers, certified public accountants, land surveyors, physicians, optometrists, landscape architects, geoscientists or state-certified real estate appraisers, or the services of those providers that are members of disciplines requiring special knowledge or attainment and a higher order of learning, skill and intelligence.

Selection of Provider of Professional Services

The City may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award: (1) on the basis of demonstrated competence and qualifications to perform the services; and (2) for a fair and reasonable price.

The professional fees under the contract may not exceed any maximum provided by law.

Contract for Professional Services of Architect, Engineer, or Surveyor

When procuring the services of Architects, Engineers and Surveyors, the City must first select the most highly qualified provider on the basis of demonstrated competence and qualifications and then attempt to negotiate a fair and reasonable price with that provider. If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the City shall: (1) formally end negotiations with that provider; (2) select the next most highly qualified provider; and (3) attempt to negotiate a contract with that provider at a fair and reasonable price. The City shall continue the process described above to select and negotiate with providers until a contract is entered into.

Generally, this procedure is administered by the Engineering Department which has responsibility for procuring architectural, engineering, and surveying services.

A Request for Qualifications (RFQ) model of procurement can be used to satisfy this procedure.

Contract for Professional Services Related to Independent Audit of City Comprehensive Annual Financial Report (CAFR)

The City shall request proposals from all qualified firms, including the current audit firm if the City's Audit Committee deems the past performance to have been satisfactory. In compliance with City Charter, Article 1, Section 27 Independent Audit, the term shall be for three years with the possibility of two – 1 year renewals. Audit Committee approval is required prior to contract renewal.

It shall be the City's preferred practice to follow the guidelines described in the section titled "**Contract for Professional Service not of Architect, Engineer, or Surveyor,**" except that the authority granted to the City Manager or Assistant City Manager shall be granted to the Audit Committee.

In addition to the requirements of sub-section "A. Public Announcement," the RFP for the independent audit shall include the weighted value of the criteria that will be used to evaluate the proposals and the RFP shall require the proposed fees to be submitted in a sealed envelope with the proposal.

In addition to the requirements of sub-section "B. Selection Committee," the Selection Committee shall be composed of subject matter experts from the following departments: Financial Services, Procurement, City Attorney, and City Auditor. The members will individually rank the qualified firms based on demonstrated competence and qualifications to perform the audit. Group discussion will result in consensus on the initial ranking of the top firms (up to five) which will be presented to the Audit Committee for consideration.

Using the fees from the sealed envelopes along with the initial ranking provided by the Selection Committee, the Audit Committee will determine the final ranking of the firms which in their opinion would provide the best value for the City for a fair and reasonable price.

In addition to the requirements of sub-section "C. Negotiation of Contracts," the Audit Committee will take the final rankings along with the final selection and negotiated price to the City Council for final approval.

Contract for Professional Services not of Architect, Engineer, or Surveyor

It shall be the City's preferred practice to issue Requests for Proposals (RFP) for professional services that are not architectural, engineering, or surveying services. Contracts for such services will be awarded on the basis of demonstrated competence and qualification for the type of professional services to be performed, as determined by the City, in its sole discretion, at fair and reasonable prices. Generally, this procedure is administered by the Purchasing Division, which has responsibility for procuring professional services (other than architectural, engineering, and surveying services).

A Request for Proposal model of procurement can be used to satisfy this procedure.

Request for Proposal (RFP) for Professional Services

The following procedures are applicable when using the Request for Proposal model of procurement for professional services.

A. Public Announcement

Notice of the need for professional services shall be made by the City through newspaper legal notices and other methods of announcements to include the City's website and professional organization websites. The notice shall describe the services required and list the location where documents can be downloaded or obtained.

The RFP must include the criteria that will be used to evaluate the proposals in the City's selection process. Factors to be used shall include,

any or all, but not be limited to, comparable projects; experience of the firm and individuals within the firm who will be performing the work; capacity to perform the work in relation to overall workload; performance on past City projects and other clients; overall qualifications of the firm, and specific project approach.

Before issuing an RFP, it must be approved by the Assistant City Manager with administrative authority over the department, except that an Assistant City Manager may give the purchasing official general authority to issue RFP's that comply with this procedure.

B. Selection Committee

A staff committee may be appointed by the department head or the purchasing official to review proposals, select a short list of the most highly qualified firms and interview them, if necessary. In making the decision for the short list, selection criteria identified in the RFP must be taken into account. Firms shortlisted may then be invited to make an oral presentation to the selection committee.

Unless the City Manager or Assistant City Manager provide otherwise, the selection committee shall then make a recommendation to the City Manager or Assistant City Manager of the most highly qualified firm as well as provide its ranking of the top firms, which the City Manager or Assistant City Manager shall consider before making a final determination as to which firm, of all the firms that submitted proposals in response to the RFP, is selected as the most qualified firm.

C. Negotiation of Contracts

Staff shall negotiate a contract with the selected firm. If the City is unable to negotiate a satisfactory contract with the most highly qualified firm, the City shall formally end negotiations with that firm and begin negotiations with the second most highly qualified firm. Negotiations shall be undertaken in this sequence until a contract is made.