

ORDINANCE NO. 24-38

AN ORDINANCE PERTAINING TO THE OLATHE PROCUREMENT POLICIES; AMENDING SECTIONS 3.50.010, 3.50.030, 3.50.040, 3.50.050, 3.50.060, 3.50.070, 3.50.080, 3.50.090, 3.50.100, 3.50.110, 3.50.120, 3.50.125, 3.50.140, 3.50.145, 3.50.150, 3.50.160, 3.50.170, AND 3.50.180, AND REPEALING THE EXISTING SECTIONS; ADDING NEW SECTION 3.50.190; ALSO REPEALING SECTION 3.50.130.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

SECTION ONE: Section 3.50.010 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.010 Definitions.

For the purposes of this Chapter the following terms, phrases, words, and their derivations ~~shall~~ have the meaning given herein:

“Advantageous” connotes a judgmental assessment of what is in the City’s best interest.

“Aggregate value” means the total price to be paid by or to the City for all supplies or services to be provided under a single contract, renewal, or amendment.

“Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

“Change Order” means a written modification or addition to a purchase order or contract.

“City” is the City of Olathe, Kansas.

“City Manager” means the City Manager or designated representative for the City of Olathe.

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“Invitation for Bid (IFB)” means a publicly advertised solicitation to prospective vendors requesting a competitive firm price quotation in response to a detailed set of specifications. Not subject to discussion or negotiation after opening.

“Local Business” means any business entity based in and operating within the City of Olathe.

“Local Preference” means the discretion of the Governing Body to award contracts for supplies, ~~materials, and equipment~~ to a local business under the standards set forth in Section 3.50.140.

“Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, or services, ~~materials or equipment~~ not connected to a Public Works construction project. It also includes all functions that pertain to the obtaining of any supplies, ~~or services, materials or equipment~~ including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration. For the purposes of this Chapter, procurement shall not mean the solicitation or award of a Public Works construction contract.

“Public Works Construction Contract” means a contract to construct a public infrastructure project including, but not limited to, waterlines, sewer lines, streets, sidewalks, storm sewers, public buildings or facilities, and water or sewer treatment plants.

“Request for Proposal (RFP)” means a publicly advertised request to prospective vendors for a solution to the requested service, or supplies, ~~materials or equipment~~ with negotiated pricing and other terms and conditions. A solicitation document that is used for negotiated procurements.

“Request for Qualifications (RFQ)” means a publicly advertised request to prospective vendors to submit their qualifications to provide the requested service or supplies with negotiated terms and conditions, which may include pricing. A solicitation document that is used for negotiated procurements.

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“Responsible Bidder” means a vendor who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

“Responsive Bidder” means a vendor who has submitted a bid that conforms in all material respects to the Invitation for Bid, [Request for Proposal, or Request for Qualifications](#).

“Services” means the furnishing of labor, time, or effort by a contractor.

“Supplies” [or “goods”](#) means all personal property, including but not limited to equipment, materials, commodities, and printing.”

SECTION TWO: Section 3.50.030 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.030 Invitation for Bid.

Unless an alternative procedure is authorized by other sections of this chapter, [procurement of](#) all supplies, ~~materials, equipment~~ and services, when the estimated cost is ~~\$25,000 and \$100,000 or~~ [\\$100,000 or](#) greater, ~~shall~~ [must](#) be ~~purchased~~ by ~~invitation~~ [Invitation](#) for ~~bid~~ [Bid](#) from the lowest responsive and responsible bidder, or at the discretion of the Governing Body under the standards set forth in Section 3.50.140, after due notice inviting bids and unless specifically provided otherwise herein.

(A) *Public Notice.*

(1) *Distribution.* Invitation for Bid (IFB) or notices of the availability of ~~Invitations for Bid shall~~ [IFBs must](#) be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of availability ~~shall~~ [must](#) indicate where, when, and for how long ~~Invitations for Bids~~ [IFBs](#) may be obtained; [will](#) generally describe the supplies, ~~materials~~ or ~~equipment~~ [services](#) desired; and may contain other information as is appropriate.

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(2) *Publication.* ~~Notice of every procurement of \$25,000 and greater shall be published once in the official City newspaper.~~ A competitive solicitation with an estimated cost that is \$100,000 or greater, regardless of type of competitive solicitation utilized, must be advertised in a matter that provides reasonable notice to the public of the competitive bid opportunity. Reasonable notice typically includes, but is not limited to, posting the solicitation on the City of Olathe's online bidding tool and other means as deemed appropriate by the Procurement Manager in accordance with procurement procedures.

Any solicitations utilizing external funding, such as federal or state grants, will include notices published in a manner that complies with the funding source requirements.

(3) *Public Availability.* A copy of the ~~Invitation for Bids shall~~ IFBs will be made available for public inspection ~~at the designated City office upon request.~~ All active IFBs will be available for public access on the City's designated procurement website.

(B) *Bid Evaluation and Award.*

~~(1) For bids with an aggregate value between \$25,000 and \$50,000, the City Manager shall make an award determined to be the most advantageous to the City, taking into consideration price and any other pertinent evaluations factors.~~

~~(2) For bids with an aggregate value of \$50,000~~ \$100,000 or greater, the City Manager ~~shall~~ will recommend to the Governing Body an award determined to be most advantageous to the City, taking into consideration price and any other pertinent evaluation factors. The Governing Body ~~shall~~ will make the final award.”

SECTION THREE: Section 3.50.040 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.040 Request for Proposal and Request for Qualifications.

The following provisions apply to Request for ~~proposal~~ Proposal (RFP) and Request for Qualifications (RFQ) shall be governed as provided in the following:

(A) *Conditions for Use.* ~~Request for proposal~~ RFP or RFQ may be used where it is necessary to ~~insure~~ ensure fair and reasonable price analysis, but not to preclude competition for technical excellence. Generally, ~~request for proposal~~ RFP or RFQ may be used under the following conditions:

- (1) The procurement of professional services (except legal services).
- (2) The procurement of technical items or equipment.
- (3) The procurement of complex services.
- (4) The purchase of nonstandard items.

(B) *Public Notice.* Public notice of the ~~Request for Proposals shall~~ RFP or RFQ must be given in the same manner as provided in Section 3.50.030(A) (Invitation for Bid).

(C) *Evaluation of Proposals.* The ~~Request for Proposals shall~~ RFP or RFQ must state all of the evaluation factors. The evaluation ~~shall~~ must be based on the evaluation factors set forth in the ~~Request for Proposals~~ RFP or RFQ. Factors not specified in the ~~Request for Proposals shall~~ RFP or RFQ will not be considered.

(D) *Award.*

~~(1) For requests for proposals with an aggregate value between \$25,000 and \$50,000, the City Manager shall make an award to the responsible bidder whose proposal is determined to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the Request for Proposals.~~

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(2)– For ~~Requests for Proposals~~ RFPs or RFQs with an aggregate value of ~~\$50,000~~ \$100,000 or greater, the City Manager ~~shall~~ will recommend to the Governing Body an award to the responsible bidder whose proposal is determined to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the ~~Request for Proposals~~ RFP or RFQ. The Governing Body ~~shall~~ will make final award.”

SECTION FOUR: Section 3.50.050 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.050 Purchases Procurement Less Than ~~\$50,000~~ \$100,000.

The City Manager ~~shall~~ will adopt operational procedures for ~~making purchases~~ procurement of supplies or services having an aggregate value of less than ~~\$25,000~~ \$100,000. Such operational procedures ~~shall~~ must provide for obtaining adequate and reasonable competition and for making records to properly account for funds. For ~~purchases~~ procurement of supplies or services having an aggregate value of between ~~\$25,000~~ \$50,000 and ~~\$50,000~~ \$100,000, the City Manager ~~shall~~ must use the procedures of Section 3.50.030, unless alternative procedures are authorized by this chapter. A report detailing ~~purchases~~ procurement between ~~\$25,000~~ \$50,000 and ~~\$50,000~~ must \$100,000 will be submitted to the Governing Body on a quarterly basis, post award.

For any price agreement the City enters into, the aggregate value will be considered the amount authorized for purchases under the price agreement for a single year, even if the price agreement is a multi-year contract. For the purposes of this section, “price agreement” means a contract that establishes an agreed-upon cost for supplies or services and other terms and conditions under which such supplies or services may be purchased but does not itself include a specific purchase of or order for such supplies or services.”

SECTION FIVE: Section 3.50.060 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.060 Sole Source and Single Source Procurement.

A ~~Contract under~~ contract of less than \$50,000 \$100,000 may be awarded for supplies, or services, ~~materials or equipment~~ without competition when the City Manager determines that there is only one source available. A written record of the factors pertinent to such award will be maintained. For sole source contracts of ~~\$50,000 and \$100,000~~ or greater, approval of the Governing Body will be required..

A contract of less than \$100,000 may be awarded for supplies or services without competition when the City Manager determines that single source is the preferred method of procurement. Single source is a procurement decision whereby purchases are directed to one source because of standardization, warranty, or other factors, even though the competitive processes established in this Chapter would otherwise be appropriate. A written record of the factors pertinent to such award will be maintained. For single source contracts of \$100,000 and greater, approval of the Governing Body will be required.”

SECTION SIX: Section 3.50.070 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.070 Emergency Procurement.

Notwithstanding any other provision of this Chapter, the City Manager may make emergency procurements when there exists ~~a threat to public health, welfare or safety~~ an emergency condition, provided that such emergency procurements ~~shall be~~ are made ~~with such competition~~ competitively as is practical under the circumstances. ~~Such~~ An “emergency condition” is ~~further~~ defined as an immediate and serious need for supplies, or services, ~~materials, or equipment~~ that cannot be timely met through normal procurement methods and the lack of which would threaten:

- (A) The function of City government;
- (B) The preservation or protection of property; ~~and/or~~
- (C) The public health, ~~or~~ safety, or welfare ~~of any person.~~”

SECTION SEVEN: Section 3.50.080 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.080 Procurement of ~~Professional~~ Legal Services.

~~(A) Professional services are generally associated with the following disciplines:~~

~~(1) Architect, engineer and land surveying services.~~

~~(2) Appraisal services.~~

~~(3) Financial, accounting and auditing services.~~

~~(4) Legal services.~~

~~(5) Consulting services.~~

~~(6) Health care services.~~

~~(7) Insurance services.~~

~~(8) Data processing consulting and programming services.~~

~~(9) Testing and inspection services.~~

~~(10) Photographic, art or marketing services.~~

~~(11) Employment of temporary employees as advisors, lobbyists, etc. Lobbying services.~~

~~(B) The provisions of Section 3.50.040 (Request for Proposal) shall apply to all procurements of professional services (except legal services) which are expected to be \$50,000 and \$100,000 or greater. Procurement of professional services (including legal services) expected to be less than \$50,000 shall \$100,000 must be made in accordance with the operational procedures authorized in Section 3.50.050 (Purchases Less Than \$50,000~~

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~~Professional services uniquely applicable to a project may be determined to be a sole source or single source service and may be negotiated with a single contractor in accordance with the procedures contained in Section 3.50.060 (Sole Source and Single Source Procurement).~~

~~(C)– The following provisions apply to the engagement of outside legal counsel for the provision of legal Legal services expected to be \$50,000 \$100,000 and or greater shall be governed by the following on a single matter:~~

~~(1) Not less than three (3) law firms shall be contacted to submit proposals for the services required by the City;~~

~~(2) The proposals shall be submitted to the Governing Body, which shall award a contract based upon the proposal that is most advantageous to the City, taking into consideration not only price, but also technical competency.~~

~~(3)–The City Attorney shall will maintain a list of attorneys and law firms along with qualifications and specialties which may be utilized in requesting proposals.~~

(2) No fewer than three (3) attorneys or law firms should be contacted to submit proposals of the services required by the City. The City Attorney will select one or more attorneys or law firms deemed in the City Attorney’s discretion to be the most advantageous to represent the City on the given matter, taking into consideration not only price but also legal expertise and experience.

(3) The City Attorney will review the matter with the Governing Body for ratification of the continued engagement of the selected firm or firms.”

SECTION EIGHT: Section 3.50.090 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.090 Renewal/Extension Option.

Unless otherwise provided by law, a contract for supplies, ~~materials,~~ ~~equipment~~ or services may be renewed or extended provided the term of the contract and conditions for renewal or extension, if any, are included in the solicitations. The option will only be exercised as it is deemed to be in the best interest of the City. Consideration will include price, quality, vendor performance, economic trends and other evaluation factors which would affect the City’s best interest. The City Manager ~~shall~~ must make recommendation for renewal/extension of any contract totaling ~~\$50,000 and \$100,000 or~~ greater to the Governing Body ~~for review~~. The Governing Body ~~shall~~ will make final award as it is determined to be most advantageous to the City. The City Manager may award a renewal/extension for contracts totaling ~~\$50,000 or~~ less than \$100,000. The City may renew or extend contracts for up to a five (5) year total contract period. After expiration of the fifth contract year, it is the City’s best practice and preference to rebid the good or service when possible.”

SECTION NINE: Section 3.50.100 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.100 Change Orders and Contract Addendums.

Change orders and contract addendums are issued to cover costs or address changes in terms and conditions associated with unforeseen problems not addressed in the bidding or contract document, or changes/modifications that may be recommended after a contract award. Change orders and contract addendums on contracts may be approved by the City Manager for amounts less than ~~\$50,000~~ \$100,000. Change orders and contract addendums of ~~\$50,000~~ \$100,000 or greater must be approved by the Governing Body; provided, however, that in instances where it is in the best interest of the City for a change order to be implemented prior to the next regularly scheduled meeting of the Governing Body, the City Manager ~~shall have the authority to~~ may authorize the change subject to ratification by the Governing Body.”

SECTION TEN: Section 3.50.110 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.110 Property Acquisition.

A contract for the purchase of interests in real property associated with an approved public improvement project may be approved by the City Manager if the cost for the acquisition is less than ~~\$50,000~~ \$100,000. All other property acquisition ~~shall require~~ requires approval of the Governing Body.”

SECTION ELEVEN: Section 3.50.120 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.120 Disposition of Property.

The City Manager may transfer, sell, exchange or destroy any surplus, obsolete, abandoned or confiscated personal property without competitive bidding if such property has a value of less than ~~\$50,000~~ \$100,000. No personal property ~~shall~~ may be sold without receiving competitive bids if the value is ~~\$50,000 and~~ \$100,000 or greater. For the purposes of this Chapter, a public auction ~~shall qualify~~ qualifies as competitive bidding.”

SECTION TWELVE: Section 3.50.125 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.125 Disposition of Real Property.

Except as provided otherwise by law, the Governing Body may convey, sell, trade, give, transfer, or exchange any real property in any manner that the Governing Body deems is in the best interests of the City in accordance with City Council Policy F-10 (Sale of Surplus Real Property) and any amendments thereto.”

SECTION THIRTEEN: Section 3.50.140 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.140 Local Preference Standards.

For supplies, ~~materials, and equipment~~ acquired through bids, where an award is to be made to the lowest responsive and responsible bidder, a

bid from a local business may be selected over the lowest responsive and responsible bid only if:

- (A) The bid from the local business is responsive and responsible;
- (B) The quality, suitability, and usability of the supplies, ~~materials, and/or equipment~~ are equal to that of the lowest responsible bidder; and
- (C) The amount of the bid of the local business does not vary more than two percent (2%) and does not exceed ~~Five Thousand Dollars (\$5,000)~~ Ten Thousand Dollars (\$10,000) above the amount of the lowest responsible bid. Such variance ~~shall~~ will be calculated based on the total contract price.

The local preference described in this Section ~~shall~~ does not apply to bids in which federal funds or other governmental funds are used when the use of such funds prohibits the application of local preference policies.”

SECTION FOURTEEN: Section 3.50.145 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.145 Required Contractual Provisions of City Contracts.

The City of Olathe, Kansas ~~shall~~ will not award contracts nor let bids to individuals or entities unless the vendor, contractor or individual agrees to indemnify and hold the City of Olathe, Kansas, harmless from any and all losses, damages or expenses of any kind arising out of any and all claims, demands, or causes of action initiated against the City of Olathe, Kansas, by competing entities bidding on the project which is the subject of the contract.”

SECTION FIFTEEN: Section 3.50.150 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.150 Prohibited Contractual Provisions in City Contracts.

The City of Olathe, Kansas ~~shall~~ will not award contracts nor let bids to individuals or entities which attempt to do any of the following or include any of the following in the proposed contract:

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(A) Any diminishment of the common law or statutory standard of care, limitation of liability, or other attempt to reduce responsibility for mistake, error, or negligence of any type on the part of the vendor, contractor or individual.

(B) Attempts to limit liability for breach of contract or negligent performance to the amount of the payment to the contractor by the City.

(C) Attempt to claim ownership of intellectual property created during the performance of the contract with the City.

(D) Arbitration agreements.

(E) Provision for damages for breach by owner contrary to common law or statute including, but not limited to, any attempt to provide for attorney fees as part of recoverable damages.

(F) Attempt to designate the laws of any other state besides the laws of the State of Kansas as the law under which the contract is construed, interpreted, and/or enforced, or designate any forum or venue for resolution of disputes other than the District Court of Johnson County, Kansas.

(G) Any other attempted reallocation of risk contrary to common law or statute.

(H) Any attempt to eliminate the City's ability to collect consequential, exemplary or punitive damages, or any other measure of damages permitted by law, in an action against the vendor, contractor or individual for breach of contract.

(I) Any attempt to limit the City's final authority to determine whether it must disclose a document or other record under the Kansas Open Records Act (K.S.A. 4-215, et seq.) and the manner in which such document or other record will be disclosed."

SECTION SIXTEEN: Section 3.50.160 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.160 Prohibited Acts in City Contracts.

No vendor, contractor or individual submitting proposals or bids to the City of Olathe, Kansas, ~~shall~~ may attempt to insert any of the contractual provisions prohibited by Section 3.50.150 into any contracts or agreements proposed to the City of Olathe, Kansas.”

SECTION SEVENTEEN: Section 3.50.170 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.170 Penalties.

Any vendor, contractor or individual who, without the express permission of the Governing Body, City Manager, or Department Director (as applicable in accordance with this Chapter), or permitted to do so by the ~~request Invitation~~ for ~~bids~~ Bids, ~~or request~~ Request for ~~proposals~~ Proposal, or Request for Qualifications, or included as alternate provisions to be bid or proposed, proposes to enter into or enters into a contract with the City of Olathe, Kansas, which omits any of the contract provisions required by Section ~~3.50.140~~ 3.50.145 or contains any of the contract provisions barred by Section 3.50.150 may be found to be in violation of this article. Any vendors, contractors or individuals found to be in violation of this article may be barred from bidding on future contracts with the City of Olathe, Kansas.”

SECTION EIGHTEEN: Section 3.50.180 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.180 Conflict Between Sections 3.50.145 and 3.50.150 and Contract.

Unless otherwise permitted as set forth in Section 3.50.170, to the extent any contract entered into by or on behalf of the City of Olathe, Kansas omits any of the contract provisions required by Section 3.50.145, such provisions of Section 3.50.145 will prevail, and the required contract provisions will be read into the contract. To the extent any contract entered into by or on behalf of the City of Olathe, Kansas contains any of the contract provisions barred by Section 3.50.150, such provisions of

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Section 3.50.150 will prevail and the offending provisions ~~shall be~~ are null and void and shall be unenforceable as to the City of Olathe, Kansas.”

NEW SECTION NINETEEN: Section 3.50.190 of the Olathe Municipal Code is hereby added to the Olathe Municipal Code to read as follows:

“3.50.190 Procurement of Revenue Producing Supplies and Services.

For contracts that would produce revenue for the City based on the sale or rental of goods or services to the public by the contractor, the City Manager will adopt operational procedures to identify such contracts that should be taken through the City’s competitive procurement processes. For any contracts so identified with an aggregate value of revenue to the City of \$100,000 or more, the City Manager will recommend to the Governing Body an award determined to be most advantageous to the City, taking into consideration amount of revenue and any other pertinent evaluation factors.

SECTION TWENTY: Existing Sections 3.50.010, 3.50.030, 3.50.040, 3.50.050, 3.50.060, 3.50.070, 3.50.080, 3.50.090, 3.50.100, 3.50.110, 3.50.120, 3.50.125, 3.50.130, 3.50.140, 3.50.145, 3.50.150, 3.50.160, 3.50.170, and 3.50.180 are hereby repealed.

SECTION TWENTY-ONE: This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

PASSED by the Governing Body this _____ day of _____, 2024.

SIGNED by the Mayor this _____ day of _____, 2024.

Mayor

ATTEST:

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City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.