ORDINANCE NO. 15224

FILE OF CITY COUNCIL

BILL NO. 39 - 2015

Introduced by Councilpersons Eichenwald and Guridy

August 5, 2015

AN ORDINANCE

Amending Article 130.16, Contracts, of the Codified Ordinances, by requiring Council approval of professional services, contracts over $40,000, and change orders above a 10% threshold.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALLENTOWN:

SECTION 1. That Article 130.16, Contracts, be amended to include the following:

130.16 CONTRACTS

A. Administration

1. Contract administration for the City including but not limited to authority as to preparation of specifications, letting of bids, award of contracts and payment of bills, shall be vested in the Mayor and the Department of Finance to be exercised in accordance with procedures adopted by the Mayor, on file with City Council, and consistent with the requirements set forth herein. (12497 §1 1/20/82).

(a) For the award of contracts or the engagement of professional services, coordination with and approval by Resolution of City Council prior to contract or engagement execution is required. In the case of contracts or the engagement of professional legal services exempted from Council approval under provisions of the Home Rule Charter, the Administration and Solicitor's Office shall forward a memo to the Clerk's Office informing Council of the service. The memo shall include the name of the provider of service, projected rates and estimated total costs for such services, the terms of the contract, and the budgetary allocation.

(b) For the award of all contracts over $40,000 that are required to be bid, recommendation of the lowest responsible bidder by the Department of Administration and approval by Resolution of City Council prior to contract execution are required.

(c) For all contracts over $40,000 that are required to be bid whenever an increase by 10% or more is recommended by the Administration, resubmission to City Council and approval by Resolution prior to execution of any increase are required.

(d) For purposes of this Article, when calculating the dollar value of a contract with renewal clauses, the maximum amount of all renewals provided for beyond the original term shall be included as if all renewals were exercised.

(e) The Administration shall make available to the City Clerk's Office a list by Department of each duly executed purchase order, identifying the vendor, the product or service purchased and the amount of each purchase order.

(f) The Administration shall establish and maintain an ongoing prioritized contract monitoring function consistent with established best practices to ensure that the objectives of city contracts are accomplished and vendors meet their responsibilities. The Administration shall make available to Council and the Clerk's Office all information relating to this section.

(g) The Administration shall request City Council approval of a Contract Award or change order above the 10% threshold as established by City Ordinance on a form supplied to the Administration by Council Office. The form shall include, but not be limited to the type of contract or change order, funding source, name and address of the recommended Contract/Vendor/Professional Service Provider/Lowest Responsible Bidder, term of the contact, estimated completion date, description of the project or scope of services, the actual or estimated price and payment schedule, renewal options, maximum dollar value of all renewals if applicable, and reasons for recommendation.

(h) All bid, contract and engagement contracts with the exception of legal counsel exempt under the provisions of the Home Rule Charter shall contain language noting such engagement is subject to Council approval by resolution at a public meeting.

2. Every contract shall specifically state that the vendor agrees not to hire City personnel who may exercise discretion in the awarding, administration or continuance of that vendor's contract. The prohibition shall be in force for up to and including one year following the termination of the employee from City service. A vendor's failure to abide by this provision shall constitute a breach of the contract, and the agreement shall so state. (14407 §1 7/31/06)

B. Bidding Process

1. Whenever the estimated cost of any construction, erection, installation, completion, alteration, repair of, or addition to, any project subject to the control of the City shall exceed Forty Thousand ($40,000) Dollars; it shall be the duty of the City to have such work performed pursuant to a contract awarded to the lowest responsible bidder, after advertisement for bids. Every such contract shall contain a provision obligating the contractor to the prompt payment of all material furnished, labor supplied or performed, rental for equipment employed, and services rendered by public utilities in or in connection with the prosecution of the work, whether or not the said material, labor, equipment or service enter into and become component parts of the work or improvement contemplated. Such provision shall be deemed to be included for the benefit of every person, partnership, association or corporation who, as subcontractor or otherwise, has furnished material, supplied or performed labor, rented equipment or services in or in connection with the prosecution of the work as aforesaid, and the inclusion thereof in any contract shall preclude the filing by any such person, partnership, association or corporation of any mechanics' lien claim for such material, labor or rental of equipment. (Art. VIII, §815; 13596 §1 8/21/9; 14684 §1 2/23/09)

2. Whenever the estimated costs of any purchase of supplies, materials or equipment or the rental of any equipment, whether or not the same is to be used in connection with the construction, erection, installation, completion, alteration, repair of, or addition to, any project subject to the control of the City, shall exceed Forty Thousand ($40,000) Dollars, it shall be the duty of the City to have such purchase or rental made pursuant to a contract awarded to the lowest responsible bidder, after advertisement for bids, such advertisement including but not limited to any of the following: newspaper advertisements, internet and trade publications, and shall be posted on the City Website. The City shall make every effort to use available resources to secure the most cost effective responsible bid and this shall include but not be limited by the internet, buying groups, co-ops, consortiums, e-commerce, and reverse auctions. (Art. VIII, §815; 13596 §1 8/21/97; 14684 §1 2/23/09)

a. The City shall not evade the provisions of subsection (a) or (b) as to advertising for bids by purchasing materials or contracting for services piecemeal for the purpose of obtaining prices under Forty Thousand ($40,000) Dollars upon transactions which should, in the exercise of reasonable discretion

and prudence, be conducted as one transaction amounting to more than Forty Thousand ($40,000) Dollars. This provision is intended to make unlawful the practice of evading advertising requirements by making a series of purchases or contracts, each for less than the advertising requirement price, or by making several simultaneous purchases or contracts, each below said price, when, in either case, the transactions involved should have been made as one transaction for one price. (Art. VIII, §815; 13596 §1 8/21/97; 14684 §1 2/23/09)

b. Written or telephonic price quotations from at least three (3) qualified and responsible contractors or vendors shall be requested for all contracts that exceed Ten Thousand ($10,000) Dollars but are less than the amount requiring advertisement and competitive bidding or, in lieu of price quotations, a memorandum shall be kept on file showing that fewer than three (3) qualified contractors exist in the market area within which it is practicable to obtain quotations. A written record of telephonic price quotations shall be made and shall contain at least the date of the quotation, the name of the contractor and the contractor's representative, the construction, reconstruction, repair, maintenance or work which was the subject of the quotation and the price. Written price quotations and written records of telephonic price quotations and memoranda shall be retained for a period of three (3) years. (Art. VIII, §815; 14684 §1 2/23/09)

3. The City shall require as a condition of the award of any contract, pursuant to Subsection (a) or (b) of this section, that the contractor give to the City any bond or Letter of Credit (including bonds for the performance of the contract, and for the prompt payment by the contractor for material, supplies, labor, services and equipment) which are prescribed by law for contracts awarded by cities of the Third Class. (Art. VIII, §815)

4. All contracts, change orders and leases shall be on file in the office of the City Controller and shall be available for public inspection during normal business hours. (Art. VIII, §815; 13596 §1 21/8/97; 14684 §1 2/23/09)

5. Resident Preference:

a. For the purposes of this section, "Resident Business" means one which maintains its principal place of business in the City of Allentown or maintains an office which employs at least five (5) employees in the City of Allentown.

b. When bids are received from both non-resident and resident businesses, or for a product manufactured in Allentown or manufactured by an entity headquartered in Allentown, and products which are not, and the lowest responsible bid is from a non-resident business or not manufactured in Allentown or by an entity headquartered in Allentown, the contract shall be awarded to the responsible resident business or the product manufactured in Allentown or manufactured by an entity headquartered in Allentown, whose responsible bid is nearest to the bid price of the otherwise low non-resident bidder, if the bid price of the resident bidder is made lower than the bid price of such non-resident business when multiplied by a factor .95. (Residence Preference provision was approved in a Charter Referendum, November 4, 1997)

c. In order to qualify for the preference set forth in Subsection B., above, the resident business or manufacturer must be properly licensed to do business in the City of Allentown and in compliance with all City Ordinances and regulations.

d. This section shall not apply to bids for the construction of public improvements in excess of $50,000, or

where the difference between the lowest non-resident bid and the lowest resident bid is in excess of $2,500, or where otherwise prohibited by law or state or federal regulation. (13650 §1 3/5/98)

C. Emergency Purchases. The bidding requirements of this section shall not apply to emergency purchases. An emergency purchase shall mean a purchase necessary for the public safety or to avoid a significant financial loss to the City. 14684 §1 2/23/09)

Emergency purchases shall be determined by the Mayor, Managing Director, or designee and within one week after the purchase of any goods, equipment or services described in the above, the Finance Director shall submit to the City Controller a report detailing the justification for excluding said purchase from advertised bidding requirements, the vendor selected for the purchase, the price paid for the goods, equipment or services purchased, and any additional information as the City Controller may require. (13596 §2 8/21/97; 14684 §1 2/23/09)

D. Sweatshop Prohibition: The City is prohibited, to the extent possible, from purchasing, leasing, renting or taking on consignment goods produced under sweatshop conditions. (13591 §1 7/17/97)

The City is directed to notify the City's suppliers of this policy in writing.

Vendors or suppliers must authorize a statement verifying they have made a good faith effort to ascertain such information about the factories which manufacture their products.

To the extent possible, goods from suppliers who will not state that their products are not made under sweatshop conditions will not be purchased.

The criterion spelled out below shall be included in every City purchase as part of the contract stipulating that said vendor has made a good faith effort to ascertain such information about the factories which manufacture their products.

Such a compliance form must also be submitted from each vendor that desires to go on any bidding list.

The following criterion shall be used to qualify goods as not being procured under sweatshop conditions:

1. Child Labor. The factory does not employ anybody younger than the legal age for children to work in the country in which the factory is located, and regardless of the legal age, does not employ anybody younger than age 15.

2. Forced Labor. The factory does not use forced labor of any kind -- prison labor, indentured labor or bonded labor.

3. Wages and Benefits. The factory pays a wage which enables its employees to meet their basic needs for food, shelter, clothing and medical care and to set aside money for future purchases. The factory also provides all benefits required by law in their country and compensates workers for overtime.

4. Hours of Work. Employees are not required to work more than 48 hours per week or less if the law of the country in which the factory is located sets a shorter work week.

5. Workers' Rights. The factory is a workplace free from physical, sexual or verbal harassment. Employees have the right to speak up about conditions in the factory without fear or retaliation and have the right to form unions of their own choosing without employer intimidation.

6. Health and Safety. The factory provides a safe and healthy working environment. (13591 §1 7/17/97)

E. Purchase of Professional Services

1. Unless otherwise prescribed or superseded by the City Charter, any purchase of professional services (excluding those related to public debt offerings or other borrowing) in any amount that exceeds Forty Thousand ($40,000) Dollars shall be made by written contract and shall be conducted as follows (12497 §1 1/20/82; 13351 §1 9/22/95; 13351 §1 9/22/95; 13445 §1 5/20/98; 14684 §1 2/23/09)

Requests for professional consulting services (excluding those related to public debt offerings or other borrowing) shall be advertised in any of the following: Newspaper advertisements, internet and trade publications, and shall be posted on the City website. The City shall make every effort to use available resources to secure the most cost effective responsible bid, and this shall include but not be limited by the internet, buying groups, co-ops, consortiums, e-commerce, and reverse auctions. 14684 §1 2/23/09)

a. The advertisement shall be in one of two alternative formats. First, it may simply serve notice that a Request for Proposal (RFP) is available for review listing all basic information necessary to elicit responses. Second, the advertisement may briefly summarize the nature of the requested services and solicit statements of qualifications from firms interested in providing the requested services to the City. As a result of the information provided in this phase, selected qualified firms will be asked to respond to a detailed RFP. 14684 §1 2/23/09)

b. The Request for Proposal shall clearly describe the desired services and shall include, but not be limited to the following information:

1. General background information pertinent to the requested services.

2. Nature and scope of requested services including minimum tasks and activities to be performed together with prescribed completion schedule.

3. Methodology and technical approach to be used in accomplishing the requested work.

4. Description of reports required.

5. Documentation of qualifications and experience in similar work and resumes of staff members to be assigned to the engagement.

6. Compensation information including detailed cost information itemizing hours and rates of each class of staff to be utilized, overhead and profit (if not included in such rates), and out-of-pocket expenses such as travel, telephone, publication and duplication.

7. Estimated utilization of City resources necessary to complete the engagements.

8. Information on the City's evaluation and selection process. (12432 §1 10/1/80; 13351 §1 9/22/95)

2. The selection process shall be based on the objective criteria contained in the RFP and shall be conducted by a Selection Committee composed of the Director of Finance, Department Head, Bureau Manager, and any other staff deemed appropriate. (12497 §1 1/20/82)

3. Unless otherwise prescribed or superseded by the City Charter, whenever fewer than three (3) proposals are received from qualified and responsible vendors for professional services of more than Ten Thousand ($10,000) Dollars but less than the amount requiring advertisement and competitive bidding Forty Thousand ($40,000) Dollars, the administrative documentation that requests execution of any resulting contract shall provide the reason(s) for not obtaining three (3) proposals. The contract and the administrative documentation shall be kept on file at the City Controller's Office. (14684 §1 2/23/09)

F. Policy and Procedures for Engineering By Consultants For State and Federally Funded Projects (15013 §1 8/15/12)

The following procedures shall be used for the orderly determination of the need to use consulting engineering firms, the qualifications and selection of firms, and general administration and monitoring of engineering agreements.

Upon being notified of the need to initiate engineering services on a project, the City Engineer shall analyze the City of Allentown forces to determine if the services of a consulting firm are necessary. The analysis regarding the need to engage consultants will be documented in the project file.

A detailed scope of work describing the project, its location, and services required, will be prepared. An engineering cost estimate will be prepared to compare with the consultant's proposal. A Disadvantaged Business Enterprise (DBE) Goal Request will be submitted to PennDOT's Consultant Agreement Section. The request for letters of interest from consulting firms interested in performing the required engineering services will be advertised in the following: Newspaper advertisements, internet and trade publications, and shall be posted on the City Website. The request for letters of interest must appear in at least two newspapers, of wide local circulation, for one advertisement cycle as required by municipal codes, other statutes or home rule charters. The City of Allentown will submit their advertisements for approval and publishing in Engineering and Construction Management System (ECMS) to either:

Paper copy		Electronically
Department of Transportation Bureau of Project Delivery Highway Delivery Division Contract Management Section 400 North Street, 7th Floor Harrisburg, PA 17120	or	ECMS_Local_Advertisements@pa.gov

The City shall make every effort to use available resources to secure the most cost effective responsible bid and this shall include but not be limited by the internet, buying groups, co-ops, consortiums, e-commerce, and reverse auctions.

The advertisement will include the following information:

a) Location and brief description of the required engineering services.
b) Indication of the method of procurement as competitive negotiations;
c) A statement that the City of Allentown encourages responses from small firms, minority firms, and firms who have not previously performed work for the City.
d) The Disadvantaged Business Enterprise Goal, if any, or nondiscrimination provisions to encourage the prime to notify DBE subconsultants of contracting opportunities associated with the agreement and solicit their participation, if DBE Goals are not required for the agreement.
e) A statement that indicates whether the modified or standard selection method will be used.
f) A list, in order of importance, of the selection criteria against which the letters of interest will be reviewed.
g) A request for special requirements U.S. General Services Administration (GSA) Form 330.
h) Contact information for project discussions.
i) Cut-off time for response to the advertisement (minimum of two weeks).

Three consultants will be selected from those consultants who submit letters of interest. A qualification selection committee, consisting of a minimum of three people:

a. Director of Public Works or designee,
b. Utility Engineer or designee,
c. Assistant City Engineer or designee,
d. Construction Manager or designee

shall review the qualifications of consultants who submit letters of interest as well as their responsiveness to the requirements of the advertisement. Documentation of consultants considered and the committee's recommendation shall be maintained in the project file. The committee shall document the reasons for their recommendations.

For selecting a consultant to perform bridge inspection, construction inspection agreements, or non-complex or selected moderately complex projects as defined in DM1, or for selecting a consultant as a Municipal Engineer a modified process may be used, and a ranking will be determined based on a review of the statements of interest.

For all other Agreements the normal selection method will be used. The Director of Public Works shall review the recommendations of the qualification committee and select three firms to be recommended to the Pennsylvania Department of Transportation (herein after called the Department) as the consultants to prepare a proposal. Upon receipt of the approval of the consultants from the Department, a technical proposal shall be requested from the consultants.

The request for technical proposals shall include a brief written scope of work. The consultants will be invited to a scope of work meeting at which time the project will be explained in detail. Representatives from the Department will be invited to the meeting. The consultants will be advised of the applicable Federal regulations, review procedures, contract format, and administration. A copy of the Department's Publication 442 will be supplied that the specifications will be made a part of the contract. The City of Allentown's limitations of profit, wages, etc. will be explained. The consultants will be given a name and phone number to contact in case they would have any questions during the preparation of their proposal.

Upon receipt of the technical proposals from the consultants, the qualification committee shall review the technical proposals and make a recommendation for the ranking of the shortlisted consultants for the purpose of negotiating an engineering agreement. The committee shall document the reasons for their recommendation.

The City of Allentown shall conduct discussions with the firms to consider anticipated concepts and

compare alternative methods for furnishing services.

For both modified and standard methods of selection, the Director of Public Works shall review the recommendation of the qualification committee and in order of preference, rank the firms. The ranking will be recommended to the Department for approval. Documentation supporting the ranking of the consultants shall be forwarded to the Department when requesting approval of the consultant's ranking. The Department shall approve and/or comment on the municipalities recommended ranking.

The City of Allentown will request a price proposal from the approved first ranked firm and submit the appropriate number of copies to the Department.

The Department will conduct the pre-award evaluation and schedule and hold negotiations, if necessary.

The agreement will be prepared by the Department and circulated for signatures.

It is understood that the consultant cannot begin work until the Federal authorization has been obtained, and both the engineering Agreement and the Reimbursement Agreement have fully executed, and notification of this fact has been received by the City of Allentown.

The City Council designates the Public Works Director to perform liaison activities between the City of Allentown, the Department, and the consultant.

The City of Allentown will enter into a reimbursement agreement with the department setting forth the methods for reimbursing the federal funds to the City of Allentown. The reimbursement agreement will be prepared by the Department.

During the life of the engineering agreement, monthly (or at other appropriate times) meetings will be held with the consultant and the designated liaison person. The Department will be invited to attend these meetings. Documentation of these meetings will be included in the project file.

Partial payment invoices for work performed will be processed as provided by Publication 442. After review of the invoices by the Public Works Director, or his designee, it will be paid. The invoice will in turn be forwarded to the Department with recommendation for reimbursement of the Federal and/or State share.

Prior to termination of services and payment of the final invoice, a joint review will be made by the Department and the City of Allentown to insure the propriety of claims and that all terms and conditions of the contract have been satisfied. Documentation of these findings will be submitted to the Department with the final invoice.

The City of Allentown's designated liaison person will complete copies of the Form D-429, "Past Performance Report for Consultant Engineers", see Appendix 7G or Form D-429 CI, "Past Performance Report for consultant Engineers Construction Inspection", see Appendix 7H.

It is understood and made part of these procedures that the employees of the City of Allentown will neither solicit nor accept gratuities, favors, or anything of monetary value from consultants or contractors or potential consultants or contractors. Violators of said standards will be subject to dismissal from their employment with the City of Allentown by order of the City Council.
City Council. (15013 8/21/2012)

G. List of Subcontractors Required

Contractors that are awarded a bid shall provide a list of all subcontractors if they will engage in any work on the project. The list shall be part of the contract that shall be on file in the Controller's Office. (14428 §1 10/6/06)

SECTION 2. That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

SECTION 3: That this ordinance will take effect ten (10) days after final passage.

AMENDMENT

A. Administration

2. Contract administration for the City including but not limited to authority as to preparation of specifications, letting of bids, award of contracts and payment of bills, shall be vested in the Mayor and the Department of Finance to be exercised in accordance with procedures adopted by the Mayor, on file with City Council, and consistent with the requirements set forth herein. (12497 §1 1/20/82).

(a) For the award of contracts or the engagement of professional services, coordination with and approval by Resolution of City Council prior to contract or engagement execution is required. **In the case of contracts or the engagement of professional legal services exempted from Council approval under provisions of the Home Rule Charter, the Administration and Solicitor's Office shall forward a memo to the Clerk's Office informing Council of the service. The memo shall include the name of the provider of service, projected rates and estimated total costs for such services, the terms of the contract, and the budgetary allocation.**

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(c) For all contracts over $40,000 that are required to be bid whenever an increase by 10% or more is recommended by the Administration, resubmission to City Council and approval by Resolution prior to execution of any increase are required.

(d) For purposes of this Article, when calculating the dollar value of a contract with renewal clauses, the maximum amount of all renewals provided for beyond the original term shall be included as if all renewals were exercised.

(e) The Administration shall ~~file or cause to be filed monthly~~ **make available to** ~~with~~ the City Clerk**'s Office** a list by Department of each duly executed purchase order, identifying the vendor, the product or service purchased and the amount of each purchase order.

(f) The Administration shall establish and maintain an ongoing prioritized contract monitoring function consistent with established best practices to ensure that the objectives of city contracts are accomplished and vendors meet their responsibilities. **The Administration shall make available to Council and the Clerk's Office all information relating to this section.**

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(h) All bid, contract and engagement contracts with the exception of legal counsel exempt under the provisions of the Home Rule Charter shall contain language noting such engagement is subject to Council approval by resolution at a public meeting.

Amendment passed, 7 – 0

	Yea	Nay
Joe Davis	X	
Jeanette Eichenwald	X	
Jeff Glazier	X	
Daryl Hendricks	X	
Cynthia Y. Mota	X	
Julio A. Guridy, VP	X	
Ray O'Connell, Pres.	X	
TOTAL	7	0

I hereby certify that the foregoing Ordinance was passed by City Council on September 16, 2015 and signed by the Mayor on September 22, 2015.

Michael P. Nach

CITY CLERK