

ORDINANCE NO. 14684

FILE OF CITY COUNCIL

BILL NO. 1 - 2009

JANUARY 7, 2009

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AN ORDINANCE

Amending the Administrative Code, Article 130.16, Contracts, by standardizing bidding policies and controls to ensure the most cost effective securing of goods and services for the City of Allentown.

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

SECTION ONE: That the Administrative Code, Article 130.16, be amended to include the following and to read as follows:

**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 and consistent with the requirements set forth herein. (12497 §1 1/20/82).

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 ~~Twenty Thousand (\$20,000)~~ 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 the 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.

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 ~~Twenty Thousand 20,000~~ 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.

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 ~~Twenty Thousand 20,000~~ 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 ~~Twenty Thousand 20,000~~ 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.

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 ~~(Four Thousand \$4,000)~~ 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.

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.

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. The Controllers Office shall be authorized to review all bids and bid documentation to make sure that procedures followed meet with the guidelines of this article.

5. Resident Preference:

a. A five (5%) percent local resident preference shall be applied for Resident Businesses or products either manufactured in Allentown or manufactured by entities headquartered in Allentown, but the preference is not to exceed \$2,500. A 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.

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 above, the Finance Director shall submit to the ~~City Council~~ 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 Council~~ City Controller may require. (13596 §18/21/97)

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 Personal~~ or of Professional Services

1. Unless otherwise prescribed or superseded by City Charter, any purchase of ~~personal or~~ professional services (excluding those related to public debt offerings or other borrowing) in any amount that exceeds ~~Twenty Thousand (\$20,000)~~ 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):

Requests for professional consulting services (excluding those related to public debt offerings or other borrowing) shall be advertised in ~~a local newspaper(s) for general circulation; regional metropolitan newspapers and, where applicable, trade journals.~~ 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.

- 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.
- 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 City Charter, whenever fewer than three (3) proposals are received from qualified and responsible vendors for professional services of more than \$10,000 but less than the amount requiring advertisement and competitive bidding (\$40,000), 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.**

~~Written or telephonic price quotations from at least three (3) qualified and responsible providers of personal or professional services shall be requested for all contracts that exceed Ten Thousand (\$10,000) Dollars and up to Forty Thousand \$40,000 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 vendor and the vendor's representative, the nature of the 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.~~

### 3. E. Policy and Procedures for Engineering By Consultants For State and Federally Funded Projects

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. The request for letters of interest from consulting firms interested in performing the required engineering services will 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 but not be limited by the internet, buying groups, co-ops, consortiums, e-commerce, and reverse auctions. ~~in newspapers of~~

local daily circulation. At the same time the advertisement will be forwarded to the newspaper for publication, a copy will be sent to:

Consulting Engineer's Council of PA  
2001 North Front Street  
Suite 337  
Harrisburg, PA 17102

The advertisement will include the following information:

- a. Location and brief description of the required engineering services.
- b. A statement that the City encourages responses from small firms, minority firms, and firms who have not previously performed work for the City of Allentown.
- c. Cut-off time for response to the advertisement (minimum of two weeks).
- d. Special requirements Forms 254 and 255.

Three consultants will be selected from those consultants who submit letters of interest. A qualification committee selected by the Public Works Director shall review the qualifications of consultants who submit letters of interest. 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.

The City Engineer shall review the recommendations of the qualification committee and select three firms to be recommended to the Pennsylvania Department of Transportation (hereinafter 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 form, and administration. A copy of Division 1 of the Department's Form 442 will be supplied to the consultants with the understanding that the specifications will be made a part of the contract. The City of Allentown's limitations of profit, wages, overhead factors, etc., will be explained. The consultants will be given a name and phone number to contact in case he/she would have any questions during the preparation of his/her 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 short-listed consultants for the purpose of negotiating an engineering agreement. The committee shall document the reasons for their recommendation.

The City Engineer shall review the recommendation of the qualification committee and rank, in order of preference, 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 municipality's recommended ranking.

The municipality will request a cost proposal from the agreed to 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 notification of this fact has been received by the City.

The City Council designates the City Engineer 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 Division 1, Form 442. After review of the invoices by the Public Works Director, it will be paid. The invoice will in turn be forwarded to the Department with recommendation for reimbursement of the federal 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 Department's Form D-429, "Past Performance Report Consultant Engineers" and Form D-388, "Confidential Design Evaluation Report", and submit them to the Department.

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. (13077 §1 9/18/91)

#### F. 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 TWO: That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

SECTION THREE: That this Ordinance take effect ten (10) days after final passage.

Amendment:

**Controllers Amendments:**

B. 2, b – add or vendors after contractors

B. 4., add change orders and leases after All Contracts.

**Consensus Amendments from the Committee:**

E. Delete the word of Personal

E. 1. Preface the first and second paragraphs with “Unless otherwise prescribed or superseded by City Charter”

E. 2. Delete the second paragraph and substitute...

"Unless otherwise prescribed or superseded by City Charter, whenever fewer than three (3) proposals are received from qualified and responsible vendors for professional services of more than \$10,000 but less than the amount requiring advertisement and competitive bidding (\$40,000), 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."

The amended section would read as follows:

E. Purchase ~~of Personal~~ or Professional Services

1. Unless otherwise prescribed or superseded by City Charter, any purchase of ~~personal~~ of professional services (excluding those related to public debt offerings or other borrowing) in any amount that exceeds ~~Twenty Thousand (\$20,000)~~ 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):

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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)

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#### On Emergency Purchases – add the Mayor:

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.

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 above, the Finance Director shall submit to the City Council 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 Council City Controller may require. (13596 §18/21/97)

Amendments

	Yea	Nay
Michael Donovan	X	
Jeanette Eichenwald	X	
Julio A. Guridy	X	
David M. Howells, Sr.		
Tony Phillips	X	
Peter G. Schweyer	X	
Michael D'Amore, President	X	
TOTAL	6	0

	Yea	Nay
Michael Donovan	X	
Jeanette Eichenwald	X	
Julio A. Guridy	X	
David M. Howells, Sr.		
Tony Phillips	X	
Peter G. Schweyer	X	
Michael D'Amore, President	X	
TOTAL	6	0

I hereby certify that the foregoing Ordinance was passed by City Council and signed by His Honor the Mayor on the 23<sup>rd</sup> day of February, 2009.

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CITY CLERK

## RATIONAL

Detailed procurement systems should not be in the charter – the City needs to have flexibility to use multiple avenues as the times change. The procurement process adopted over a decade ago was prior to the advent of the internet, buying groups, co-ops, consortiums, e-commerce, and reverse auctions – using these avenues will enable the city to save dollars not only on items, but the time it takes for the purchasing bureau to process a good or service to be procured.

Procurement system scoped out in the charter costs the city money and time. \$20,000 threshold was written into the charter document more than 12 years ago. To advertise and go out for bids takes an average of at least 30 days. Reduce costs for the city in transaction time and employee time and allow purchasing to give a more expeditious response to bureau requests and deal with vendors in a more timely fashion.

The advertising section would open our avenues to buying through co-ops or consortiums where the city can take advantage of group buying and cost savings through the power of purchase in group buying...the greater the quantity the more money saved.

In widening the procurement process, the City will be able to reach a wider audience of vendors to make competitive quotes and bidding work to the city's advantage to obtain the best possible price.