

ORDINANCE NO.: 2016-47

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA, AMENDING CHAPTER 7, ARTICLE I SECTION 7.101 ENTITLED “DEFINITIONS”; ARTICLE III SECTION 7.303 ENTITLED “COMPETITIVE SEALED REPLIES” AND SECTION 7.306 ENTITLED “RESPONSIBILITY OF BIDDERS AND RESPONDENTS”; ARTICLE IX, SECTION 7.900 ENTITLED “PROTESTS”; ARTICLE X SECTION 7.1000 ENTITLED “COOPERATIVE PURCHASING”; ARTICLE XI SECTION 7.1100 ENTITLED “EQUAL OPPORTUNITY” AND SECTION 7.1102 ENTITLED “VETERAN BUSINESS ENTERPRISE”; AND ARTICLE XII SECTION 7.1204 ENTITLED “PROHIBITED COMMUNICATION” OF THE CODE OF THE CITY OF ORLANDO, FLORIDA; PROVIDING FOR CLARIFICATION, CODIFICATION, CORRECTION OF SCRIVENER’S ERRORS, SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORLANDO, FLORIDA:

SECTION ONE. Chapter 7 of the Code of the City of Orlando is hereby amended as follows:

* * * * *

ARTICLE I. SHORT TITLE, PURPOSES, RULES OF CONSTRUCTION AND APPLICATION
Sec. 7.101. Definitions.

* * * * *

38. *Procurement and Contracts Division:* ~~The~~ the City ~~division of the Office of Business and Financial Services~~ responsible for the procurement of supplies, services, professional services, and construction required by the City (formally known as the Purchasing and Materials Management Division).

* * * * *

ARTICLE III. SOURCE SELECTION
Sec. 7.303 Competitive Sealed Replies.

- A. *Determination of Use.* When the Chief Procurement Officer determines that procurement by an Invitation for Bids or other solicitation method, is not in the best interest of the City, and

that negotiation may be necessary for the City to receive the best value, the Chief Procurement Officer may procure commodities and contractual services by competitive sealed replies.

- B. *Invitation to Negotiate (ITN).* Competitive sealed replies shall be solicited through an Invitation to Negotiate (ITN).
- C. *Prequalification; Short Listing.* A prequalification or short listing process may be conducted as part of or prior to the issuance of an ITN ~~in order to establish a list of qualified respondents~~. In the event a prequalification or short listing process is used, the Chief Procurement Officer may limit consideration to responses that are submitted from prequalified or short listed respondents.
- D. *Public Notice.* Public notice of the Invitation to Negotiate shall be given in the same manner as provided for in competitive sealed bidding.
- E. *Receipt of Competitive Sealed Replies.* Competitive sealed replies shall be opened and held in accordance with Florida public records laws.
- F. *Evaluation Criteria.* The Invitation to Negotiate shall state the criteria to be used in the evaluation of the replies ~~and shall include its relative importance~~.
- G. *Advisory Committee/Negotiation Team.* The Chief Procurement Officer may appoint an advisory committee and/or negotiation team to evaluate ~~and rank~~ the replies, negotiate and make a recommendation ~~based on the criteria set forth in the Invitation to Negotiate. The Chief Procurement Officer may also appoint a negotiation team as determined necessary or appropriate by the Chief Procurement Officer.~~
- H. *Negotiations with Respondents.* Negotiations may be conducted with one or more respondents. Negotiations may be either sequential or concurrent as determined by the Chief Procurement Officer and set forth in the Invitation to Negotiate.
- I. *Rules of Negotiation.* To the extent allowed by law, negotiators may discuss a respondent's reply, including pricing, with another respondent.
- J. *Award.* Contract award shall be made to the responsive and responsible respondent determined to offer the best value to the City, ~~taking into consideration the evaluation criteria set forth in the solicitation.~~

* * * * *

ARTICLE III. SOURCE SELECTION

Sec. 7.306 Responsibility of Bidders and Respondents.

- A. *Standards.* Factors which may be considered in determining whether the standard of responsibility has been met include without limitation whether a prospective contractor has:

1. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
2. A satisfactory record of performance with the City and other entities;
3. A satisfactory record of integrity and fair dealing;
4. The legal qualifications to contract with the City; and
5. Promptly supplied all necessary information in connection with the inquiry concerning responsibility.

B. *Written Determination of Non-Responsibility Required.* If a bidder or respondent who otherwise would have been awarded a contract is found non-responsible, the Chief Procurement Officer shall issue a written determination of non-responsibility setting forth the basis of the finding.

* * * * *

ARTICLE IX. LEGAL AND CONTRACTUAL REMEDIES

Sec. 7.900 Protests.

- A. *Filing a Protest.* In accordance with the terms and conditions of this Section, any actual or prospective bidder, proposer, offeror, respondent, or contractor who is aggrieved in connection with a solicitation or award of a contract may protest to the Chief Procurement Officer. A protest must be filed with the Chief Procurement Officer in writing within the times set forth in this Article and must be accompanied by the non-refundable filing fee and protest security set forth in Subsection B. below. The written protest should identify the party filing the protest, the solicitation or contract with respect to which the protest is being filed, the legal and factual grounds for the protest, ~~and~~ the relief being requested, and contain all necessary information, legal authority, and evidence to support the protest.
- B. *Non-refundable Filing Fee; Protest Bond or other Security.* A protest must be accompanied by the payment of a two hundred fifty and no/100 dollar (\$250.00) non-refundable filing fee. Said filing fee may be paid in cash, by bank or certified check, or by such other means as acceptable to the Chief Procurement Officer, and must be received prior to the expiration of the time for filing a protest. In addition to the filing fee, unless a different amount is specified in the terms of a particular solicitation, at the filing of the written protest, the aggrieved bidder, proposer, offeror, respondent, or contractor shall post with the Procurement and Contracts Division, a security in the form of a bond (in a form, and with such terms, approved by the Chief Procurement Officer) payable to the City of Orlando in an amount equal to one percent (1%) of the estimated price quoted, bid or proposal amount, or five thousand and no/100 dollars (\$5,000.00), whichever is less. In lieu of a bond, the City may accept an irrevocable letter of credit, cashier's or certified check, or money order in

the above referenced amount (in a form, and with such terms, approved by the Chief Procurement Officer). Such bond or other security must be received prior to the expiration of the time for filing a protest. If the protest is successful, the posted security will be refunded in full. If the protest is unsuccessful, the security shall be returned, less all fees, expenses, damages, costs and charges incurred by the City. Noncompliance with these requirements, in whole or in part, including the failure to pay the non-refundable filing fee or file a security in the full amount within the applicable deadline for filing of the protest, shall be deemed to be a waiver by the protestor of its rights under this ordinance.

C. *Costs.* The protestor shall be liable for all of its own costs and expenses incurred related to a protest, including all appeals.

D. *Time for filing a Protest.* A protest must be filed within seven (7) calendar days after such aggrieved person knows or should have known of facts giving rise thereto; provided, however that:

1. Any protest with respect to the terms, conditions, specifications, or procedures contained in a solicitation must be filed by the date established by the Chief Procurement Officer and set forth in the solicitation. If no date is established for such protests in the solicitation, such a protest must be filed no later than seven (7) calendar days after the posting of the solicitation or the addendum containing the provision at issue.
2. No protest of any kind with respect to a solicitation or contract may be filed more than seven (7) calendar days after the City's posting of a Notice of Intended Action to make an award or setting forth the final recommended rank order of respondents to a solicitation.
3. Notwithstanding anything in this Procurement Code to the contrary, no protest may be filed or heard after the contract award has been approved by City Council, or the contract has been fully executed if City Council approval is not necessary.

E. *Prohibited Challenges.* Notwithstanding anything in this Procurement Code to the contrary, the following matters may not be protested:

1. If the City elects in its sole discretion to weight solicitation evaluation criteria or adopt a formula for evaluation, a protest may not challenge the relative weight assigned to the solicitation evaluation criteria by the City, or the formula adopted for evaluation. If the City elects in its sole discretion not to weight solicitation evaluation criteria or to adopt a formula for evaluation, a protest may not challenge such elections. ~~for assigning points in making an award or recommendation of award.~~
2. A protest may not challenge a decision or action of the Chief Procurement Officer under Section 7.312 of the Code, entitled "Award, Cancellation or Rejection of Solicitations."

180
181 F. *Chief Procurement Officer's Decision.* The Chief Procurement Officer shall attempt to settle
182 or resolve protests, with or without a meeting or hearing, at the option of the Chief
183 Procurement Officer. The Chief Procurement Officer may request information from, and
184 speak individually or collectively to, any people or entities having information relevant to the
185 protest, including but not limited to the protestor and other respondents to a solicitation.
186 Copies of the protest and other records may be provided to any person or entity as deemed
187 appropriate by the Chief Procurement Officer. The protesting party may not provide
188 additional evidence or otherwise amend its protest after timely filing of a written protest
189 without the approval or request of the Chief Procurement Officer granted prior to a written
190 decision being rendered on the protest. The Chief Procurement Officer shall render a written
191 decision on the protest within thirty (30) calendar days following receipt of the protest. The
192 time for rendering a written decision may be extended by the City's Chief Financial Officer
193 in the best interest of the City.
194

195 G. *Appeal of the Chief Procurement Officer's Decision.* Any person aggrieved by the decision
196 of the Chief Procurement Officer may appeal to the Chief Financial Officer within seven (7)
197 calendar days from the date of the Chief Procurement Officer's written decision. Said appeal
198 shall be in writing and shall state with specificity the grounds therefor and the action
199 requested of the Chief Financial Officer. Said appeal shall be based solely upon the issues,
200 arguments, information, and evidence before the Chief Procurement officer at the time of the
201 written decision on the protest was issued. New issues, arguments, information, or evidence
202 may not be submitted. The Chief Financial Officer shall attempt to settle or resolve the
203 matter, with or without a meeting or hearing, at the option of the Chief Financial Officer.
204 The Chief Financial Officer may request information from, and speak individually or
205 collectively to, any person or entity having information relevant to the matter, including but
206 not limited to the appealing party and other respondents to a solicitation, if any. Copies of the
207 protest, appeal and other records may be provided to any person or entity as deemed
208 appropriate by the Chief Financial Officer. The Chief Financial Officer shall render a written
209 decision on the appeal within thirty (30) calendar days following receipt of the appeal, or
210 notify the appealing party within said thirty (30) day period that additional time is required
211 before a decision will be rendered.
212

213 H. *Appeal of the Chief Financial Officer's Decision.* Decisions of the Chief Financial Officer
214 may be appealed to City Council by submission to the City Clerk of a written request for
215 hearing within seven (7) calendar days from the date of the Chief Financial Officer's written
216 decision. The written request shall state with specificity the grounds for the appeal and also
217 the action requested of City Council. Said appeal shall be based solely upon the issues and
218 information before the Chief Financial Officer at the time the written decision on the appeal
219 was issued. New issues, arguments, information, or evidence may not be submitted. When
220 an appeal is scheduled for oral presentation before City Council, the appellant and City staff
221 shall each be given ten (10) minutes to present the appeal and response. In its discretion,
222 City Council may extend the time allotted for argument and/or allow other interested persons
223 to speak.
224

I. *Finality.* A final decision under this section shall be conclusive and shall represent the position of the City.

J. *Timeliness; Jurisdiction.* Timely filing of the protest and/or appeals, including any and all required fees and bonds, is jurisdictional. Notwithstanding any provision of this Section to the contrary, in the event that the final day for a City employee or official to respond or for a person to file a protest or appeal with the Chief Procurement Officer, Chief Financial Officer, or City Clerk falls on a Saturday, Sunday, or a City observed holiday, the date for responding or filing such protest or appeal shall be extended until the next day which is neither a Saturday, Sunday, or City observed holiday. In accordance with the provisions of Section 7.106 of this Procurement Code, any notice, filing, or other submission received by the City after the close of the City's business hours at 5:00 p.m. local time, shall be deemed received by the City effective as of the next business day of the City.

~~K. *K.*~~ *Stay Pending Protest and Appeal.* In the event of a timely protest and/or appeal, the City shall not proceed further with the solicitation or with the award of the contract unless the Chief Procurement Officer, after consultation with the head of the using agency, forwards to the Chief Financial Officer a written request to award the contract without delay in order to protect the public health, welfare or safety, and such request is approved by the Chief Financial Officer.

L. *Reservation of Rights.* Nothing in this Section shall be deemed to preclude the City at any time in its discretion from raising and considering any issue related to a solicitation or award, requesting or accepting additional information, or resolving any protest or subsequent appeal on any ground or basis as may be in the best interest of the City.

* * * * *

ARTICLE X. INTERGOVERNMENTAL RELATIONS

Sec. 7.1000 Cooperative Purchasing.

A. *Cooperative Purchasing Authority.* In accordance with Section 7.202, the Chief Procurement Officer shall have the authority to enter into an agreement with one or more public entities or external procurement units to:

1. sponsor, conduct, or administer a cooperative purchasing agreement for the procurement or disposal of any supplies, services, professional services, or construction;
2. cooperatively use supplies or services;
3. commonly use or share warehousing facilities, capital equipment, and other facilities;
4. purchase goods, services, professional services, or construction;

- 269 5. receive or make available information, technical assistance, and other services that
270 may assist in improving the efficiency or economy of procurement; or
271
272 6. provide or receive personnel services.
273

274 B. *Utilization.* The Chief Procurement Officer is hereby authorized to purchase from, and to
275 award contracts that are the result of, cooperative purchasing agreements or agreements that have
276 been awarded by a public entity or external procurement unit, in accordance with Section 7.202.
277 The Chief Procurement Officer is also authorized to negotiate and enter into contracts directly
278 with Vendors selected by another public entity or external procurement unit to provide similar
279 goods, services, professional services or construction to those that may be required by the City in
280 accordance with Section 7.202.
281

282 * * * * *

283 **ARTICLE XI. SUPPLIER DIVERSITY**

284 **Sec. 7.1100 Equal Opportunity.**

285
286
287 In support of equal opportunity and diversity in the procurement of goods and services
288 (including professional services and construction) by the City hereunder, no person shall be
289 excluded from participation in, denied the benefits of, or otherwise subjected to
290 discrimination on the grounds of such person's race, color, creed, disability, national origin,
291 age, marital status, religion, sex, or sexual orientation or gender identity.
292

293 * * * * *

294 **ARTICLE XI. SUPPLIER DIVERSITY**

295 **Sec. 7.1102 Veteran Business Enterprise.**

296 * * * * *

297
298 Notwithstanding the foregoing, this bid preference shall not apply if the lowest responsive
299 and responsible bid was submitted by another veteran business enterprise, a minority
300 business enterprise or a woman business enterprise.
301

- 302 (D) For procurement by competitive sealed proposals, invitation to negotiate, and
303 requests for qualifications, participation by veteran business enterprises will receive
304 two percent (2%) of the points in the scoring as provided in the solicitation, when
305 weighted evaluation criteria with score sheets are utilized in the solicitation. A
306 business which is both a veteran business enterprise and a minority business
307 enterprise or a woman business enterprise will receive a scoring credit for either its
308 status as a veteran business enterprise or as a minority business enterprise or woman
309 business enterprise, but not both, as provided in the solicitation.
310

311 * * * * *

312 **ARTICLE XII. ETHICS IN PUBLIC CONTRACTING**

313 **Sec. 7.1204 Prohibited Communication.**

314
315 A. *Intent.* It is the intent of this procurement code to prevent respondents, and their agents and
316 representatives, from having unauthorized communications with City departments, divisions,
317 the Mayor, elected officials and their staff, advisory committee members, and City employees
318 during competitive procurements.
319

320 B. *Prohibited Communication Period.* To protect the integrity of the solicitation process, a
321 prohibited communication period is hereby established for competitive solicitation processes,
322 including invitations for bids, requests for proposals, requests for quotations, and invitations
323 to negotiate. The prohibited communication period shall commence at the time of the
324 issuance of the solicitation and terminate when a contract is fully executed, unless otherwise
325 set forth in a solicitation. During the prohibited communication period, all contacts and
326 communications by a respondent, or potential respondent, and their representatives and
327 agents regarding a solicitation shall be directed to the Procurement and Contracts **Services**
328 Division in the manner provided in the solicitation, except as may otherwise be provided in
329 this Code, authorized by the terms of a particular solicitation, or authorized by the Chief
330 Procurement Officer.
331

332 * * * * *

333
334
335 **SECTION TWO. CODIFICATION.** The City Clerk and the City Attorney shall cause
336 the Code of the City of Orlando, Florida, to be amended as provided by this ordinance and may
337 renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate
338 finding the law.
339

340 **SECTION THREE. SCRIVENER'S ERROR.** The City Attorney may correct
341 scrivener's errors found in this ordinance by filing a corrected copy of this ordinance with the
342 City Clerk.
343

344 **SECTION FOUR. SEVERABILITY.** If any provision of this ordinance or its
345 application to any person or circumstance is held invalid, the invalidity does not affect other
346 provisions or applications of this ordinance which can be given effect without the invalid
347 provision or application, and to this end the provisions of this ordinance are severable.
348

349 **SECTION FIVE. EFFECTIVE DATE.** This ordinance takes effect upon adoption.
350

351 **DONE, THE FIRST READING,** by the City Council of the City of Orlando, Florida, at
352 a regular meeting, this _____ day of _____, 2016.
353

354 **DONE, THE PUBLIC NOTICE,** in a newspaper of general circulation in the City of
355 Orlando, Florida, by the City Clerk of the City of Orlando, Florida, this _____ day of
356 _____, 2016.
357

358 **DONE, THE SECOND READING, THE PUBLIC HEARING, AND ENACTED**
359 **ON FINAL PASSAGE**, by an affirmative vote of a majority of a quorum present of the City
360 Council of the City of Orlando, Florida, at a regular meeting, this _____ day of
361 _____, 2016.

362
363 BY THE MAYOR/MAYOR PRO TEMPORE OF THE CITY OF ORLANDO, FLORIDA:
364

365 _____
366 Mayor / Mayor Pro Tempore
367

368 ATTEST, BY THE CLERK OF THE
369 CITY COUNCIL OF THE CITY OF
370 ORLANDO, FLORIDA:
371

372 _____
373 Amy T. Iennaco, City Clerk
374

375 APPROVED AS TO FORM AND LEGALITY
376 FOR THE USE AND RELIANCE OF THE
377 CITY OF ORLANDO, FLORIDA:
378

379 _____
380 City Attorney
381

382 ****[Remainder of page intentionally left blank.]****