

ORDINANCE 2020-1794

AN ORDINANCE AMENDING CITY OF MURRAY CODE OF ORDINANCES, CHAPTER 37 PROCUREMENT CODE, SPECIFICALLY §37.01; §37.02; §37.03; §37.04; §37.05; §37.06; §37.15; §37.16; §37.17; §37.18; §37.19; §37.25; §37.26; AND §37.99 IN ORDER TO RE-TITLE CHAPTER 37 AND TO ADOPT UPDATED CHANGES TO THE PROCUREMENT STANDARDS FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS.

WHEREAS, the City of Murray has approved and adopted the Procurement Standards For Community Development Block Grant Funding and further desires to amend Chapter 37, specifically §37.01; §37.02; §37.03; §37.04; §37.05; §37.06; §37.15; §37.16; §37.17; §37.18; §37.19; §37.25; §37.26; and §37.99 of the City of Murray Code Of Ordinances in order to adopt updated changes to the procurement standards for community development block grant funds.

WHEREAS, the Murray City Council has reviewed and discussed the following proposed changes to Chapter §37 of the City Of Murray Code Of Ordinances and believe that the proposed changes are reasonable and necessary.

BE IT ORDAINED by the City Council of the City of Murray, as follows:

AMENDMENT I. ADDITIONS, ASSERTIONS & CHANGES:

City of Murray Code Of Ordinances, §37 shall be retitled as follows:

Chapter 37: ~~Procurement Code~~ Procurement Code Standards For Community Development Block Grant Funds

AMENDMENT II. ADDITIONS, ASSERTIONS & CHANGES:

City of Murray Code Of Ordinances, §37 shall read in its entirety as follows:

GENERAL PROVISIONS

§37.01 SCOPE OF REGULATIONS.

All procurements made by the city, involving the expenditure of local, state and federal funds on Kentucky Community Development Block Grant Funds Projects will be made in accordance with the following procurement standards.

§37.02 MAXIMIZATION OF FREE AND OPEN COMPETITION.

Procurement transactions, regardless of method or dollar value, will maximize open and free competition. The city shall not engage in procurement practices which may be considered restrictive in trade.

§37.03 REVIEW BY ~~DIRECTOR OF PLANNING AND ZONING~~ TREASURER

Purchases will be reviewed by the ~~Director of Planning and Zoning~~ Treasurer to prevent duplication and to insure that costs are reasonable.

§37.04 CONTRACTS.

Generally, all procurement in excess of \$~~200~~500 will be memorialized and supported by a written contract. Where it is infeasible or impractical to prepare a contract, a written finding to this effect will be prepared and some form of documentation regarding the transaction will also be prepared. The contractual provisions required by ~~OMB Circular A-102, Attachment "O"~~ "The Common Rule" will be included in all contracts and purchase orders.

§37.05 DOCUMENTATION.

All source documents supporting any given transaction (receipts, purchase orders, invoices, request for proposals/request for qualification data, and bid materials) will be retained and filed in an appropriate manner. Where feasible, source documents pertinent to each individual procurement shall be separately filed and maintained. Where it is feasible to maintain individual procurement files, source documents will be filed and maintained in a reasonable manner (examples include chronologically, by vendor, by type of procurement, ~~and the like~~ etc.). Whatever form of documentation and filing is employed, the purpose of this section is to insure that a clear and consistent audit trail is established. At a minimum, source document data must be sufficient to establish the basis for selection, basis for cost (including the issue of reasonableness of cost), and basis for payment.

§37.06 LOCALLY OWNED, MINORITY OWNED, AND FEMALE OWNED BUSINESSES.

Efforts will be made and documented to solicit participation of locally owned, minority owned, and female owned businesses. Where feasible, evaluation criteria will include a factor with an appropriate weight for these firms. A list of locally owned, minority and female owned businesses, and minority businesses located within the trade region shall be maintained and utilized when issuing invitations for bids, requests for proposals, and requests for qualifications. This list shall also be consulted when making small purchases.

PROCUREMENT PROCEDURES

§37.15 METHODS OF PROCUREMENT.

Procurements shall be made by one of the following methods:

- (A) Small purchase procedures.
- (B) Competitive sealed bids.
- (C) Competitive negotiation.
- (D) Noncompetitive negotiation.

§37.16 SMALL PURCHASES.

(A) For purchases of less than \$50, efforts will be made to get the lowest and best price, but written records of such efforts are not necessary.

~~(A)(B) Purchases of supplies, equipment, and services which cost between \$200 and \$7,500 will require written estimates that cost more than \$50 but less than \$30,000 require quotations of rate, price, etc., but no legal advertisement is required. The city will solicit written responses from at least three vendors, and if no such responses are available, a statement explaining the procurement will be prepared and filed. If~~

quotations are obtained via telephone, a memorandum will be prepared setting forth the date the calls were made, parties contacted, and prices obtained.

~~(B) Purchases which cost between \$50 and \$200 require three over the telephone quotations of rate, price, and the like. A memorandum will be prepared setting forth the date the calls were made, parties contacted, and prices obtained. For purchases of less than \$50, efforts will be made to get the lowest and best price, but written records of such efforts are not necessary.~~

(C)The City will make the award to the lowest responsive and responsible source, and enter into a contract formalizing the scope of work and terms of compensation.

§37.17 COMPETITIVE SEALED BIDS.

(A) Bidding will be employed when detailed specifications for the goods or services to be procured can be prepared and the primary basis for award is cost. When the cost of a contract, lease, or other agreement for materials, supplies, equipment, or contractual services other than those personal or professional exceeds ~~\$7,500~~30,000 an invitation for bids notice will generally be prepared. Per KRS 424.120 this notice will be published at least once in ~~at least one official newspaper~~ a qualifying official newspaper of general circulation within the community. This newspaper notice will appear not less than seven days and not more than 21 days before the due date for bid proposals. ~~The Mayor may also solicit sealed bids from responsible prospective suppliers by sending them a copy of such notice.~~ In addition, the City must also solicit sealed bids from responsible prospective suppliers by distributing a copy of such notice to them.

(B) The invitation for bids will include a general description of the goods or services to be procured, the bid deposit and bond performance required (if applicable), the location where bid forms and specifications may be secured, the time and place for opening bids, and whether the bid award will be made on the basis of the lowest bid price or the lowest evaluated price. If the lowest evaluated price is used, the measurable criteria to be utilized must be stated in the invitation for bids. The newspaper notice must also contain language which calls to the attention of the bidders all applicable requirements which must be complied with such as Section 3 of the 1968 Housing Act, Section 109 of the 1974 Housing and Community Development Act, the Civil Rights Act of 1964, Executive Order 11246, and the Davis-Bacon Act.

(C) In addition to price, the following are bid evaluation criteria which may be used with varying weight dependent upon the particular procurement to be made. The criteria and their weights will be established by the invitation for bids.

- (1) The character, integrity, reputation, judgment, experience, and efficiency of the contractor.
- (2) The ability of the vendor to provide the material or service promptly or within the time specified, without delay or interference.
- (3) The quality of performance by the vendor on previous contracts, orders, or services.
- (4) The ability of the vendor to provide future maintenance and service for all equipment purchased from the vendor.

(D) The criteria upon which a bid will be awarded will be established by a review committee which will include, if possible, persons with applicable technical skills. The Mayor will appoint the reviewers, making certain that these individuals have no potential conflicts of interest with the firms or individuals under review. The committee will have no less than three members. The committee will maintain written records of its deliberations including an evaluation of each bid received.

(E) Sealed bids will be opened in public at the time and place stated in the invitation for bids. ~~The bids will be tabulated by the City Clerk.~~ The City will tabulate the bids at the time of bid opening. The results of the tabulation and the bid documents will be evaluated by the review committee which will make recommendations to the City Council. The City Council will make the decision as to whom the contract shall be awarded a firm fixed-price contract award in writing to the lowest responsive and responsible bidder. After the bid award is made by the City Council, a contract will be prepared for execution by the successful bidder. After the contract is signed, all bid deposits will be returned to all unsuccessful bidders.

(F) The city may cancel an invitation for bid or reject all bids if it is determined in writing that such is in the best interests of the city. The city may allow a vendor to withdraw a bid if requested at any time prior to the bid opening. Bids received after the time set for bid opening shall be returned to the vendor unopened.

~~(E)~~(G) In the event that all bids exceed available funds, the City may enter into negotiations with bidders in accordance with KRS 45A.375.

§37.18 COMPETITIVE NEGOTIATIONS.

(A) The city will utilize competitive negotiations, regardless of contract amount, upon a written determination that:

(1) Specifications cannot be made specific enough to permit the award of a bid on the basis of either the lowest bid price or the lowest evaluated bid price; in other words, bidding is not feasible.

(2) The services to be procured are professional or personal in nature.

(B) With the exception of procurement of certain professional services (principally engineering services), competitive negotiations will proceed as follows:

(1) Proposals will be solicited through a qualifying official newspaper advertisement; additionally, a request for proposal may be prepared and mailed to qualified vendors. The newspaper advertisement must be published at least seven days and not more than 21 days before the date for receipt of the proposals. The request for proposal will describe services needed and identify the factors to be considered in the evaluation of proposals and the relative weights assigned to each selection factor. The request for proposal will also state where further details regarding the request for proposals may be obtained. The request for proposal will call attention to the same regulations discussed in the bidding process. Requests for proposals will always include cost as a selection factor except for engineering services.

(2) Award must be made to the offeror whose proposal is determined in writing by a review committee to be the most advantageous to the city program, with price and other factors considered. Evaluations must be based on the factors set forth in the request for proposal and a written evaluation of each response prepared. The review committee may contact the firms regarding their proposals for the purpose of clarification, and record in writing the nature of the clarification. If it is determined that no acceptable proposal has been submitted, all proposals may be rejected. New proposals may be solicited on the same or revised terms or the procurement may be abandoned.

(C) For the procurement of ~~certain professional services~~ architectural/engineering (A/E) professional services, an alternative to request for proposals may be used. The city may publish a request for

qualifications. Requests for qualifications are handled in a similar method to request for proposals with the exception that cost is not a factor in the initial evaluation. A review committee will evaluate the responses and rank them by comparative qualifications. The highest scoring person or firm will be contracted and the review committee will negotiate cost. If the review committee is unable to negotiate a satisfactory cost arrangement, the second highest scoring person or firm will be invited to negotiate. The committee will maintain a written record of all such negotiations.

§37.19 NONCOMPETITIVE NEGOTIATIONS.

(A) Noncompetitive negotiations may be used for procurements in excess of ~~\$7,500~~ 30,000 when sealed bidding or competitive negotiations are not feasible. The city may purchase goods and services through noncompetitive negotiations when it is determined in writing by the Mayor that competitive negotiation or bidding is not feasible and that:

(1) An emergency exists which will cause public harm as a result of the delay caused by following competitive purchasing procedures; or

(2) The product or service can be obtained only from one source; or

(3) The contract is for the purchase of perishable items purchased on a weekly or more frequent basis; or

(4) Only one satisfactory proposal is received through request for proposals or request for qualifications; or

(5) The state has authorized the particular type of noncompetitive negotiation (for example, the procurement of services by an Area Development District).

(B) Procurement by noncompetitive negotiation requires the strictest attention to the observation of impartiality toward all suppliers. The ~~Office of Community Development~~ Commonwealth of Kentucky must approve all procurements by noncompetitive negotiation when only one supplier is involved or only one bid or response to a request for proposal/request for qualifications is received.

CODE OF CONDUCT

§37.25 CONFLICT OF INTEREST.

(A) No elected official, employee, or designated agent of the city will ~~take part~~ participate or have an interest in the selection or in award or administration of any procurement transaction if a conflict of interest, real or apparent, exists.

(B) A conflict of interest occurs when the official, employee, or designated agent of the city, partners of such individuals, immediate family members within a first degree relationship by affinity or consanguinity, or an organization which employs or intends to employ any of the above who has a financial or other interest in any of the ~~competing~~ firms selected for an award.

§37.26 ACCEPTANCE OF GRATUITIES.

No elected official, employee, or designated agent of the city shall solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, subcontractors, or potential subcontractors.

§37.99 PENALTY.

Any elected official, employee, or designated agent of the city who knowingly and deliberately violates the provisions of this code will be open to civil suit by the citizens of the city without the legal protection of the city. Furthermore, such a violation of these procurement standards is grounds for dismissal by the city. Any contractor or potential contractor who knowingly and deliberately violates the provisions of these procurement standards will be barred from future transactions with the City.

Nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in this Ordinance; nor shall any just or legal right or remedy of any character be lost impaired or affected by this Ordinance.

All other sections and provisions of the Ordinances for the City of Murray, not specifically amended herein, shall remain in full force and effect and shall not be considered amended and shall be incorporated by reference as if fully stated herein.



BOB ROGERS, MAYOR

ATTEST:



DANNETTA CLAYTON, CITY CLERK

Introduced by the City Council on April 9, 2020.

Adopted by the City Council on April 23, 2020.

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