
Secs. 2-305—2-310. Reserved.

DIVISION 3. COMPETITIVE BIDDING

Sec. 2-311. Invitation to bid and/or request for proposals.

For the purposes of this section the word bid and proposal will be considered the same.

- (1) All bids must be advertised a minimum of one (1) time in a newspaper of general circulation at least fourteen (14) days prior to the bid opening unless the department head can document that all potential bidders have been given a copy of the bid package.
- (2) The advertisement shall include a brief description of the goods and/or services desired, where a copy of the bid package may be obtained, and the time and place for the bid opening.
- (3) The bid package shall contain the time and place for the bid opening, general conditions required of all vendors, some background on the project, a bid bond, a performance bond for all contracts where the bid may be in excess of fifty thousand dollars (\$50,000.00), and the specifications for the product and/or services desired.
- (4) The use of brand names in a bid is permitted, but only for the purposes of establishing a standard. Brand names shall not be used as a way of limiting or restricting competition.
- (5) Any time constraints on a project must be identified within the bid package. Inability to meet the time constraints may be sufficient reason for a bid to be rejected.
- (6) All bids received after the time designated shall be returned unopened.
- (7) Prebid conferences may be held if needed. Attendance at a prebid conference can be but does not have to be mandatory. Notice of a prebid conference must be included in the newspaper advertisement and the bid package.
- (8) Every bid package shall contain a hold harmless provision whereby the contractor, to the fullest extent permitted by law, shall at all times indemnify, defend and hold the city harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which the city may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever and damage to or loss of or destruction of any property whatsoever, arising from, or in any way connected with the construction project.
- (9) Prior to any work beginning the contractor must provide to the city a certificate of insurance for commercial liability insurance naming the city as an additionally insured in an amount not less than five hundred thousand dollars (\$500,000.00), auto liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00), and workers compensation insurance as required by the State of Florida. The amounts of the insurance can be adjusted depending on the job.
- (10) Bid proposals must be opened at the time and place stated in the bid package. There must be at least one (1) witness to the opening in addition to the person opening the bid.
- (11) The purpose of the bid opening is only to record the vendors and the bid amounts. No analysis of the bids will be performed at the bid opening.
- (12) All bids shall be available for public inspection immediately after the bid opening.

-
- (13) All information within a bid shall be considered public information unless the information has been clearly marked as proprietary. No proprietary information shall be released without the written consent of the bidder except under a court order.
 - (14) The city shall always have the right to waive irregularities, reject any and all proposals, request the item be rebid, or to negotiate separately with vendors.
 - (15) All vendors responding to the bid package shall be notified of the results of the bid prior to city commission approval.
 - (16) All bid awards shall be to the bidder who has the lowest cost, the most responsive and responsible, and which is in the best interest of the city.
 - (17) The memo containing the recommended vendor shall contain the date the bid was advertised, the number of vendors receiving a bid package, a list of those vendors responding, and a recommendation to the city commission as to the most responsive and responsible bidder. This does not have to be the lowest bidder. However, if the lowest bidder is not chosen an explanation must be included.

(Ord. No. 92-9, §§ 1, 2, 5-14-92)

Sec. 2-312. Bid challenge.

Any bid may be challenged on the grounds of irregularities in the bid procedure or the evaluation process. Notice of intent to challenge must be made to the city clerk within seventy-two (72) hours after receipt of the intended recommendation of award. A formal written challenge must be filed within five (5) working days of the date the notice of intent was provided. Failure to file in a timely manner will constitute a waiver of the proceedings.

Notice of protest shall contain the name of the bidder, the bidder's address and phone number, the solicitation involved, and a brief summary of the basis of the protest.

The formal written protest shall identify the solicitation involved, a clear statement of the grounds on which the protest is based and specifically state the relief the vendor believes himself to be entitled. The challenger must mail a copy of the notice of protest to the vendor receiving city staff's recommendation.

The city manager shall investigate the challenge within ten (10) working days of the formal written protest. In the event the challenge is not resolved, the city commission shall be presented the written challenge and the administrator's decision on the challenge prior to the award of the bid.

(Ord. No. 92-9, §§ 1, 2, 5-14-92)

Sec. 2-313. Local preference.

- (a) *Definition of local business.* "Local business" as used herein shall mean a business that meets the following criteria:
 - (1) Has a verifiable fixed office or distribution point and has had, for at least one (1) year prior to bid or proposal opening date, a street address, which shall not be interpreted to mean a post office box, in the City of Flagler Beach or a political jurisdiction located within Flagler County, Volusia County, Putnam County or St. Johns County that has been extended reciprocity pursuant to the terms of this section;
 - (2) Possesses all business licenses required by law;

-
- (3) Has paid, for at least one (1) year prior to bid or proposal opening date, its local business tax to the City of Flagler Beach or a jurisdiction located within Flagler County, Volusia County, Putnam County or St. Johns County that has been extended reciprocity pursuant to the terms of this section;
 - (4) Has a staff comprised of employees and not independent contractors or borrowed or leased employees;
 - (5) Is not a joint venture or partnership unless all members or partners of the joint venture or partnership meet the criteria of (1) through (4) above; and
 - (6) Is the principal offeror on the subject proposal.
- (b) *Submittal of verification of local business status.* A local business desiring to receive the local business preference shall submit all information necessary to verify its status as a local business upon submitting any bid, response to request for qualifications, letter of interest, or other proposal to the city.
- (c) *Local preference in purchasing and contracting.*
- (1) In bidding for, or letting contracts for procurement of, supplies, materials, equipment and services as described in the purchasing policies of the city, the city commission, or other authorized purchasing authority, may give a preference to local businesses in making purchases or awarding contracts in an amount not to exceed:
 - a. Five (5) percent of the local business' total bid price for procurement activities in amounts less than five hundred thousand dollars (\$500,000.00); or
 - b. Three (3) percent of the local business' total bid price for procurement activities in amounts over five hundred thousand dollars (\$500,000.00);
 - (2) The total bid price shall include not only the base bid price, but also all alterations to that base bid price resulting from alternates which were both part of the bid and actually purchased or awarded by the city commission or other appropriate authority.
 - (3) In the case of requests for proposals or qualification, letters of interest, or other solicitations and competitive negotiations and selections in which objective factors are used to evaluate the responses, local businesses shall be assigned five (5) percent of the total points of the total evaluation points.
- (d) *Exceptions to local preference policy.*
- (1) The procurement preference set forth in this section shall not apply to any of the following purchases or contracts:
 - a. Goods or services provided under a cooperative purchasing agreement or interlocal agreement;
 - b. Purchases or contracts which are funded, in whole or in part, by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference;
 - c. Purchases made or contracts let under emergency or noncompetitive situations, for litigation related legal services, or sole source provider contracts;
 - d. Any contracts governed by the Consultants' Competitive Negotiations Act; or
 - e. Purchases with an estimated cost of five thousand dollars (\$5,000.00) or less.
 - (2) Application of local preference to a particular purchase, contract, or category of contracts for which the city commission is the awarding authority may be waived upon written justification and recommendation by the city manager and approval of the city commission.
 - (3) The preference established in this section does not prohibit the right of the city commission or other purchasing authority to compare quality or fitness for use of supplies, materials, equipment and

services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms, or corporations submitting bids or proposals.

- (4) The bid preference established in this ordinance does not prohibit the city commission, or other authorized purchasing authority, from giving any other preference permitted by law in addition to the preference authorized in this section.
- (e) *Reciprocity.* For purposes of this section, reciprocity shall be extended to any business located within the jurisdictional boundaries of any political jurisdiction of Flagler County, Volusia County, Putnam County or St. Johns County and such business shall be given the same preference as given to local businesses in the City of Flagler Beach if:
 - (1) Such business meets the criteria set forth in subsections (a)(1)—(6) above as to the subject political jurisdiction; and
 - (2) The subject political jurisdiction extends to businesses located in the City of Flagler Beach the same preference it extends to businesses located within its own jurisdictional boundaries.
- (f) *Application and enforcement of preference policy.*
 - (1) The local preference policy established in this section shall apply to new contracts and procurements solicited after the effective date of this section.
 - (2) This section shall be implemented in a fashion consistent with otherwise applicable city purchasing policies and procedures.
- (g) *Promulgation of rules.*
 - (1) The city manager is hereby authorized to adopt administrative rules supplemental to the provisions of this section as deemed necessary and appropriate to implement the provisions of this section.
 - (2) The provisions of this section and the rules adopted by the city manager shall be provided to potential bidders, vendors and contractors to the widest extent practicable.

(Ord. No. 2010-04, § 2, 5-13-10; Ord. No. 2012-01, § 1, 2-9-12)

Editor's note(s)—Ordinance No. 2010-04, § 6, adopted May 13, 2010 states "this Ordinance shall automatically be repealed one year after the effective date unless prior to that time, the Ordinance is reaffirmed by a majority vote of the City Commission." On February 10, 2011, the Commission passed a motion to adopt Ordinance No. 2010-04 permanently.

Secs. 2-314—2-389. Reserved.