

**AN ORDINANCE BY FINANCE/EXECUTIVE COMMITTEE TO AMEND CHAPTER 2 – ADMINISTRATION, ARTICLE X, PROCUREMENT AND REAL ESTATE CODE, DIVISION 4, SOURCE SELECTION AND CONTRACT FORMATION, SECTION 2-1188, COMPETITIVE SEALED BIDDING, TO ALLOW THE CHIEF PROCUREMENT OFFICER TO WAIVE MINOR TECHNICALITIES AND INFORMALITIES IN BIDS; AND FOR OTHER PURPOSES.**

►(HELD 6/29/19 FOR WORK SESSION)

WHEREAS, the City of Atlanta’s Department of Procurement is charged with procuring supplies, construction, professional, real estate and consultant services for the City; and

WHEREAS, to increase competition and improve the Department of Procurement’s services to its, suppliers and end users, the chief procurement officer would be allowed to waive or permit the cure of minor informalities and irregularities in bids; and

WHEREAS, the ability for the chief procurement officer to waive minor informalities and irregularities in bids will enhance transparency, accountability and integrity in the procurement process; and

WHEREAS, the Chief Procurement Officer recommends an amendment to section 2-1188 of the City’s Code of Ordinances.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

SECTION 1: That Chapter 2 - Administration, Article X, Procurement and Real Estate Code, Division 4, Source Selection and Contract Formation, Section 2-1188 of the City of Atlanta Code of Ordinances be amended so that it shall read as follows (new language in underlined and bolded font):

Sec. 2-1188. - Competitive sealed bidding.

- (a) *Conditions for use.* Contracts or purchase orders under this article shall be awarded by competitive sealed bidding, except as otherwise provided in sections 2-1187 and divisions 15 and 17 of this article.
- (b) *Invitations for bids.* An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement. Notice of all such invitations for bids shall be forwarded to all members of the finance/executive committee.
- (c) *Public notice.*
  - (1) *General notice.* An advertisement inviting bids shall be posted conspicuously at the department of procurement and advertised on an Internet website of the City of Atlanta, or a website designated by the City of Atlanta for such purpose and clearly indicated for that purpose. In addition, the advertisement will be posted on the State of Georgia’s Procurement Registry. The department of procurement may also

elect to place an advertisement inviting bids in a newspaper of general circulation and in any other medium permitted under this article. The advertisement shall be posted for 14 consecutive days preceding the date set for receipt of bids. Notice of bid security, if required, shall be included in the public notice. The public notice shall contain a general description of the supplies, services, construction or professional and consultant services to be procured and shall state the location of where appropriate solicitation documents may be obtained and the time and place of opening the documents.

(2) *Additional notice in unusual or special circumstances.*

- a. *Notice in trade or industry publications.* When required supplies, services or construction are, in the determination of the chief procurement officer in consultation with the using agency, either unusual in nature or highly specialized, the chief procurement officer shall cause an advertisement to be placed in at least one trade journal or such other specialized industry publication of circulation in the city, whichever is appropriate and most likely to bring responses from qualified and available offerors. The advertisement shall be published once and at least 14 days preceding the date set for receipt of bids. The provisions of this paragraph concerning unusual or special circumstances shall be used in addition to, and not in lieu of, the provisions in subsection (c)(1) of this section.
- b. *Assistance of using agency.* The chief procurement officer may rely upon the subject matter expertise and the assistance of personnel of the using agency who shall, prior to competitive solicitation, make a prompt written determination of the appropriate trade journal or specialized industry publication where the advertisement is to be placed. The written determination by the using agency shall be made sufficiently in advance such that notice and advertisement can be timely placed by the chief procurement officer in the next available issue of a journal or industry publication, which will be published at least 14 days preceding the date set for receipt of bids. The using agency shall provide the necessary funds from its budget for the costs and expenses associated with advertisement in trade journals or such other industry publications.
- c. *Contents of notice.* Notice of bid security, if required, shall be included in the public notice for the trade journal or such other industry publication. The public notice shall contain a general description of the supplies, services or construction to be procured and shall state the date and location where solicitation documents may be obtained, and the time and place of opening of the bids.
- (d) *Receipt of competitive sealed bids.* All bids must be delivered to and received by the chief procurement officer or designated department of procurement staff at the bid opening and timestamped no later than 2:00 p.m. Eastern Time.
- (e) *Clock calibration.* Prior to all bid openings, the chief procurement officer or designated department of procurement staff shall coordinate the clock calibration used in the bid process with the National Bureau of Standards.
- (f) *Bid opening.* The City's method of bid submission, either electronic or by other acceptable means, will be identified in the invitation for bids. Bids shall be opened publicly in the presence of one or more witnesses and the bid tabulations shall be released publicly on the City of Atlanta's Procurement website. The name of each offeror, the amount of each bid and such other relevant information as the chief procurement officer deems appropriate shall be recorded and published. Only the name of each offeror for competitive sealed proposals shall be recorded and published.
- (g) *Bid acceptance.* Bids shall be received by the chief procurement officer or designated department of procurement staff without alteration or correction, except as authorized in this article, provided that the bids are received by the chief procurement officer at the time, place and under the conditions contained in the invitation for bids.

- (h) *Bid evaluation.* Bids shall be evaluated based on the requirements set forth in the invitation for bids and the City's Code of Ordinances. Those criteria, including but not limited to discounts, transportation costs and total or life-cycle costs, that will affect the bid and price and be considered in the evaluation for the award shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.
- (i) *Correction or withdrawal of bids.*
  - (1) *Before bid opening.* Correction or withdrawal of bids may be allowed by the chief procurement officer before the scheduled time and date of bid opening. The offeror may withdraw the bid, without revealing the amount of the bid, by submitting a new sealed bid or providing written notice of withdrawal before bid opening. Notice of withdrawal shall be received by the chief procurement officer prior to bid opening.
  - (2) *After bid opening.* After bid opening, corrections in bids shall be permitted only to the extent that the offeror can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interests of the city or fair competition shall be permitted.
- (3) Minor technicalities and informalities in bids. A minor technicality or informality is one which is merely a matter of form and not of substance. A minor technicality or informality also pertains to some immaterial defect in a bid or a variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. The chief procurement officer either shall give the bidder an opportunity to cure any deficiency resulting from a minor technicality or informality in a bid, as provided in this section regarding correction or withdrawal of bids, or waive the deficiency, whichever is to the advantage of the City. Examples of minor technicalities and informalities include, but are not limited to failure of a bidder to:
  - a. Return the number of copies of signed bids required by the solicitation;
  - b. Sign its bid, but only if:
    - i. The firm submitting the bid has formally adopted or authorized, before the date set for opening the bids, the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of that authorization, and the bid carries that signature; or
    - ii. The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the bidder, with the bid, referring to and identifying the bid itself;
  - c. Acknowledge receipt of an addendum to an invitation for bids, but only if:

- i. The bid received clearly indicates that the bidder received the addendum, such as where the addendum added another item to the solicitation and the bidder submitted a bid on the item; or
- ii. The addendum has no effect on price or quantity or merely a negligible effect on quality or delivery, and is not prejudicial to bidders, such as an addendum correcting a typographical mistake in the name of the governmental body;
- d. Furnish references; and
- e. Furnish financial statements

- (4) The chief procurement officer may also exercise all rights a bidder may have to correct its bid provided in this Code section and may communicate with any bidder concerning the correction or withdrawal of its bid.
- (5) *Withdrawal*. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
  - a. The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
  - b. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids shall be supported by a written determination made by the chief procurement officer.

- (j) *Tie bids*. If two or more offerors are tied in price while otherwise meeting all of the required conditions, the contract shall be awarded to an offeror whose principal place of business is within the city or, if not within the city, within the metropolitan Atlanta area or, if not within the city or metropolitan area, within the state. Where no offeror is located within the state, the chief procurement officer shall award the contract to the offeror whose principal place of business is the closest to the city.
- (k) *Award*. The contract shall be awarded with reasonable promptness by written notice to the most responsible and responsive offeror whose bid meets the requirements and criteria set forth in the invitation for bids. In determining the most responsible and responsive offeror, the chief procurement officer, in consultation with the using agency, shall consider the following:
  - (1) The ability, capacity and skill of the offeror to perform the contract and provide the services/supplies required;
  - (2) The capability of the offeror to perform the contract and provide the services/supplies promptly or within the time specified without delay or interference;
  - (3) The character, integrity, reputation, judgment, experience and efficiency of the offeror;
  - (4) The quality of performance of the offeror of previous contracts and provision of services/supplies;
  - (6) The previous and existing compliance by the offeror with laws and ordinances relating to the contract and provision of services/supplies;
  - (7) The sufficiency of the financial resources and ability of the offeror to perform the contract and provide the services/supplies;

- (8) The compliance of the offeror with the requirements of an equal employment opportunity in contracting program as may be required by ordinance;
  - (9) When applicable, the compliance of the offeror with the requirements of a minority and female business enterprise participation program as may be required by ordinance;
  - (10) The compliance of the offeror with the requirements of a local preference program as may be required by ordinance;
  - (11) The quality, availability and adaptability of the supplies or services to the particular use required; and
  - (12) The price. If all bids exceed available funds as certified by the chief financial officer and the most responsible and responsive bid does not exceed such funds by more than five percent, the chief procurement officer is authorized, when time or economic considerations preclude resolicitation of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the most responsible and responsive offeror in order to bring the bid within the amount of available funds.
- (l) *Multi-step sealed bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those offerors whose offers have been qualified under the criteria set forth in the first solicitation.
  - (m) *Substitution, replacement by uncertified minority business enterprise or female business enterprise prohibited.* An offeror may not substitute for or replace any minority business enterprise (MBE) or female business enterprise (FBE), as those terms are defined in section 2-1443, when that MBE or FBE has been designated in writing by the offeror as a subcontractor for the contract on which the offeror has submitted a bid, if the MBE or FBE submitted as a part of the bid is not a certified, legitimate MBE or FBE, as determined by the office of contract compliance. If the office of contract compliance determines that the MBE or FBE is not legitimate or certified, the bid of the contractor who submitted the bid shall be rejected.
  - (n) The office of contract compliance shall evaluate each such bid as to the offeror's compliance with subsections (k)(7) and (8) of this section and shall notify the chief procurement officer, in writing, whether the bid is responsive or nonresponsive.

SECTION 2: The amendments contained in this ordinance shall be effective immediately upon approval.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith be and the same are hereby waived to extent of the conflict only.





<b>RESULT:</b>	<b>HELD IN COMMITTEE [UNANIMOUS]</b>	<b>Next: 7/1/2019 1:00 PM</b>
<b>MOVER:</b>	Howard Shook, Chair	
<b>SECONDER:</b>	Matt Westmoreland, Post 2 At Large	
<b>AYES:</b>	Shook, Boone, Dickens, Ide, Matzigkeit, Westmoreland	
<b>ABSENT:</b>	Natalyn Mosby Archibong	

07/01/19	Atlanta City Council	RETURNED AS HELD
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<b>RESULT:</b>	<b>RETURNED AS HELD</b>	<b>Next: 7/10/2019 1:00 PM</b>
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07/10/19	Finance/Executive Committee	HELD IN COMMITTEE
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<b>RESULT:</b>	<b>HELD IN COMMITTEE</b>	<b>Next: 8/5/2019 1:00 PM</b>
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08/05/19	Atlanta City Council	RETURNED AS HELD
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<b>RESULT:</b>	<b>RETURNED AS HELD</b>	<b>Next: 8/14/2019 1:00 PM</b>
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08/14/19	Finance/Executive Committee	
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08/19/19	Atlanta City Council	RETURNED AS HELD
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<b>RESULT:</b>	<b>RETURNED AS HELD</b>	<b>Next: 8/28/2019 1:00 PM</b>
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08/28/19	Finance/Executive Committee	HELD IN COMMITTEE
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<b>RESULT:</b>	<b>HELD IN COMMITTEE</b>	<b>Next: 9/3/2019 1:00 PM</b>
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09/03/19	Atlanta City Council	RETURNED AS HELD
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<b>RESULT:</b>	<b>RETURNED AS HELD</b>	<b>Next: 9/11/2019 1:00 PM</b>
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09/11/19	Finance/Executive Committee	HELD IN COMMITTEE
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<b>RESULT:</b>	<b>HELD IN COMMITTEE</b>	<b>Next: 9/16/2019 1:00 PM</b>
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<b>RESULT:</b>	<b>RETURNED AS HELD</b>	<b>Next: 9/25/2019 1:00 PM</b>
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<ul style="list-style-type: none"><li><input type="checkbox"/> FAVORABLE AS AMENDED</li><li><input checked="" type="checkbox"/> RETURNED AS HELD</li><li><input type="checkbox"/> FAVORABLE ON CONDITION</li><li><input type="checkbox"/> FAVORABLE/SUB/CONDITION</li><li><input type="checkbox"/> QUADRENNIALY TERMINATED</li><li><input type="checkbox"/> QUESTION CALLED</li><li><input type="checkbox"/> ROUTED TO COW</li><li><input type="checkbox"/> SUSTAINED</li><li><input type="checkbox"/> OVERRIDEN</li><li><input type="checkbox"/> NOT ACCEPTED BY COMMITTEE</li><li><input type="checkbox"/> SUSTAINED W/O OBJECTION</li><li><input type="checkbox"/> TABLED W/O OBJECTION</li><li><input type="checkbox"/> HELD IN COW</li></ul>	
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Certified by Presiding Officer	Certified by Clerk
<p>Mayor's Action</p> <p><i>See Authentication Page Attachment</i></p>	