MIDVALE CITY, UTAH

ORDINANCE NO. 2014-O-07

AN ORDINANCE AMENDING MIDVALE CITY CODE
CHAPTER 2.28, ARTICLE II - PROCUREMENT

WHEREAS, the City Council finds it in the City's best interest to amend Midvale Municipal Code Chapter 2.28, Article II - Procurement to allow prequalification of potential vendors; and

WHEREAS, the City Council of Midvale City, Utah, finds it appropriate to adopt such an ordinance in an effort to improve the prescribed bidding process.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Midvale City, Utah as follows:

Section 1. The City Council desires to amend Midvale Municipal Code Chapter 2.28, Article II - Procurement as set forth in Exhibit A.

Section 2. This ordinance shall be effective upon date of first publication.

PASSED AND APPROVED this 19th day of Aug, 2014.

JoAnn B. Seghini, Mayor

Voting by the City Council "Aye" "Nay"
Steven Brown
Paul Glover
Robert Hale
Paul Hunt
Wayne Sharp

Published this 24th day of Aug, 2014.
Chapter 2.28
FINANCE

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Article II. Procurement

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2.28.260 Classification of expenditures.

A. Large Expenditures. Except as otherwise provided herein, any expenditure by the city for supplies, services or construction of twenty-five thousand dollars or more to be paid out of the funds of the city shall be referred to as a "large expenditure" and shall be made pursuant to formal bidding set forth in Section 2.28.280. No large expenditure shall be made without written approval from the city manager. Any expenditure of one hundred thousand dollars or more must be approved by the city council.

B. Medium Expenditures. Except as otherwise provided herein, any expenditure by the city for supplies, services or construction for ten thousand dollars or more, but less than twenty-five thousand dollars, shall be referred to as a "medium expenditure" and shall be made pursuant to the formal bidding procedures set forth in Section 2.28.280 or the informal bidding procedures set forth in Section 2.28.290.

C. Small Expenditures. Except as otherwise provided herein, any expenditure by the city for supplies, services or construction for less than ten thousand dollars shall be referred to as a "small expenditure" and shall be made pursuant to the formal bidding procedures set forth in Section 2.28.280, the informal bidding procedures set forth in Section 2.28.290, or the request for quotes procedures set forth in Section 2.28.300.

D. Exempt Expenditures. The following expenditures of the city shall be referred to as "exempt expenditures" and may be made without formal or informal bidding procedures, but should be made with as much competition as practicable under the circumstances. Except where noted, the procurement officer shall determine that an expenditure falls within one of these exemptions. All exempt expenditures shall be reviewed by the city council on at least a monthly basis.

1. Minor. Any expenditure amounting to less than one thousand dollars.

2. Sole Source. Any expenditure for goods or services which are clearly by their nature not reasonably adapted to award by competitive bidding. These expenditures include, but are not limited to, goods or services which can only be purchased from a sole source, contracts for additions to and repair and maintenance of equipment already owned by the city which may be more efficiently added to, repaired or maintained by a certain person or firm, and equipment which, by reason of the training of the personnel or an inventory of replacement parts, is compatible with the existing equipment owned by the city. Sole source procurements must be approved in writing by the city manager.

3. Emergency. See Section 2.28.270 for procedures to follow.
4. State Bidding. Any expenditure for which competitive bidding or price negotiation has already occurred on the state level.

5. Interlocal Cooperation. Any expenditure made in conjunction with an agreement approved by resolution of the city council between the city and another city or governmental entity.

6. Professional Services. Any expenditure for professional services which by their nature are not reasonably adapted to award by competitive bidding. Such expenditures shall be awarded at the discretion of the city manager based on the recommendation of the department head. If the city manager determines that competitive bidding for certain professional services would benefit the city, the procedures set forth in Section 2.28.310, Request for proposals (professional services), must be followed.

7. Special Sale. Any expenditure made in conjunction with any public auction, closeout sale, bankruptcy sale or other similar sale when the procurement officer determines in writing that such purchase may be made at a cost below the market cost for the same or similar goods and such determination is reviewed and approved by the city council.

8. Exchanges. Any exchange of supplies, materials, property, or equipment between the city and any other public or private party made by mutual agreement of the respective parties.


2.28.272 Prequalification of potential vendors.

A. As used in this section, "Vendor" means:
1. a bidder;
2. an offeror; or
3. a contractor, including an architect, an engineer, or other professional service provider.

B. A department may, in accordance with this section:
1. prequalify potential vendors for a one-time bid or request for proposal process to provide a procurement item or service specified by the department; or

2. limit participation in a standard procurement process to the prequalified potential vendors for the specified procurement item or service.

C. To prequalify potential vendors, a department shall issue a request for statement of qualifications.

D. A department that issues a request for statement of qualifications:

1. shall publish the request for statement of qualifications in a newspaper of general circulation within the city limits at least ten days prior to the deadline for submission; and

2. shall state in the request for statement of qualifications:

a. the specific procurement item or service to which the request for statement of qualifications relates;

b. the scope of work to be performed;

c. the instructions and deadline for submitting a statement of qualifications;

d. the criteria by which the department will evaluate statements of qualifications;

e. that a department will limit participation in the invitation for bids or request for proposals to the potential vendors that are prequalified to provide the specified procurement item or service, and

3. may request the vendor, to provide:

a. basic information about the vendor;

b. the vendor's experience and work history;

c. information about the vendor's management and staff;

d. information about the vendor's licenses, certifications, and other qualifications;

e. any applicable performance ratings;

f. financial statements reporting the vendor's financial condition; and

g. any other pertinent information.

E. The criteria described in Subsection (D)(2):

1. shall include the prequalification requirements unique to the procurement;

2. may include performance rating criteria; and

3. may not be so restrictive that the criteria unreasonably limit competition.

F. A department may, before making a final list of prequalified vendors, request additional information to clarify responses made to the request for statement of qualifications.

G. A potential vendor shall be included on the list of prequalified vendors if the potential vendor:
1. submits a timely, responsive response to the request for statement of qualifications; and

2. meets the criteria for qualification described in Subsection (D)(2).

H. If a request for statement of qualifications will result in only one potential vendor being placed on the list of prequalified potential vendors:

1. the department shall cancel the request for statement of qualifications; and

2. the list may not be used by the department.

I. The department shall:

1. before making the list of prequalified potential vendors available to the public, provide each potential vendor who provided information in response to the request, but who did not meet the minimum qualifications for placement on the list, a written justification statement describing why the potential vendor did not meet the criteria for inclusion on the list; and

2. make the list of prequalified potential vendors available to the public within 30 days after completing the evaluation process.

2.28.274 Approved Potential Vendor List.

A. As used in this section, "vendor" has the same meaning as defined in Section 2.28.272.

B. An approved potential vendor list may only be compiled from timely, responsive responses received under Section 2.28.272.

2.28.280 Formal bidding procedure.

Except as otherwise provided herein, all large expenditures shall be made by written contract between the city and the lowest responsible bidder according to the following procedure:

A. Specifications. Specifications shall be prepared by or under direction of the department head.

B. Invitation for Bids. An invitation for bids shall be prepared by or under the direction of the department head.

A "Prequalified Potential Vendor List" as described in Code Section 2.28.274 may be utilized. The invitation shall:

1. Describe the goods or services to be purchased or work to be performed;

2. Set forth all contract terms, conditions and bond requirements applicable to the purchase or work:

   a. Set forth the criteria that will be used to evaluate the bid;

   b. State where plans, specifications and other information may be obtained;
c. State the time and place of the bid opening; and

d. Reserve to the city the right to reject any and all bids for any reason without liability.

C. Notice. The invitation for bids shall be published in a newspaper of general circulation within the city limits at least ten days prior to the opening of bids.

D. Amending Invitation. The invitation to bid may be amended, supplemented, or canceled at any time prior to the opening of bids when the procurement officer determines that such action is in the best interest of the city. The reasons for the amendment or cancellation of the invitation shall be in writing and shall be made a part of the city's records.

E. Sealed Bids. All bids shall be received by the city in sealed envelopes labeled "Bid for (item)" which shall not be opened prior to the time set for opening of the bids, except as provided in subsection (F) of this section.

F. Correction of Bids. The procurement officer shall permit correction or withdrawal of inadvertently erroneous bids in appropriate circumstances provided, that no changes in bid prices or other provisions of bids which are prejudicial to the interest of the city or fair competition shall be permitted. Any decision to permit the correction or withdrawal of bids shall be supported by a written determination prepared by the procurement officer.

G. Opening Bids. The bids shall be opened publicly by the city recorder and the department head in the presence of one or more witnesses at the time and place designated in the invitation for bids.

H. Recording Bids. The amount of each bid and the name of the bidder shall be read aloud as the bids are opened, and such information shall be recorded and open to public inspection during regular business hours for a period of not less than thirty days after the bid opening.

I. Evaluating Bids. The bids shall be evaluated within a reasonable time by the department head to determine the lowest responsible bidder based upon the following objectively measurable criteria as set forth in the invitation for bids:

1. Price. The total price of the bid.

2. Quality. The overall quality of the goods or work to be provided and/or the ability, capacity and skill of the bidder to provide any services or work required.

3. Conditions. The number and scope of any conditions or qualifications set forth in the bid.
4. Time. The time limit within which the bidder shall provide the goods, services, or work.

5. Reputation. The character, integrity, reputation, judgment, experience, and efficiency of the bidder and the quality of previous goods, services, or work obtained from the bidder.

6. Compliance. The previous and existing compliance by the bidder with laws and ordinances relating to the goods, services or work.

7. Financial Resources. The sufficiency of the financial resources and ability of the bidder to provide the goods, services, or work.

8. Future Service. The ability of the bidder to provide future maintenance and service and the local availability of parts, materials, etc.

9. Local Bidder. When possible, preference shall be given to local bidders.

J. Determination. The department head shall determine the lowest responsible bidder. All information relating to the selection of the lowest responsible bidder shall be retained by the city in accordance with the city government records access and management ordinance.

K. Cancellation and Rejection of Bids. The city reserves the right to cancel an invitation for bids or to reject any or all bids for any reason. Such cancellation or rejection shall be in writing and shall be made part of the city's records. In the event all bids are rejected and the city determines to make the improvement or purchase, it shall advertise anew as provided herein. If, after twice advertising, no satisfactory bid is received, the city council may proceed to negotiate or make the improvement or acquisition or enter such other agreements as it deems necessary or desirable.

L. Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the procurement officer shall negotiate with the tie bidders after the time of the bid opening until such time as the lowest responsible bid is obtained.

M. Single Bid. In the event only one bid is received, the bidder may be required to furnish a detailed cost proposal for review and the bid award may be subject to subsequent negotiation.
N. Bonds. Bid performance and/or payment bonds may be required in conjunction with any bid or contract entered hereunder in such form and amounts as required by law and by the city council as reasonably necessary to protect the best interest of the city.

O. Responsibility of Bidder. The department head may request additional information with respect to the responsibility of a bidder. The failure of a bidder to promptly supply information in connection with a request of the department head regarding responsibility shall be grounds for a determination of nonresponsibility and/or nonresponsiveness of the bidder. (Ord. 2/16/2010-2 § 1 (Exh. A) (part), 2010: Ord. 4/21/2009-7 § 1 (Exh. A) (part), 2009: Ord. 10/02/2007-14 § 1 (Exh. A)(2.7.209), 2007: Ord. 1/20/2004-15 (part), 2004. Formerly 2.28.090)

2.28.290 Informal bidding procedure.

Except as otherwise provided herein, all medium expenditures of the city shall be awarded to the lowest responsible bidder according to the formal bidding procedure set forth in Section 2.28.280 or according to the following procedure:

A. Invitation for Bids. The department head shall invite bids from at least three potential, responsible providers of the supplies, services or construction needed or desired. Such invitations and bids must be made in writing, including fax or electronic means, and shall be made without favoritism or bias. A "Prequalified Potential Vendor List" as described in Code Section 2.28.274 may be utilized. A record of all invitations and bids made hereunder shall be kept by the department head.

B. Evaluation. The department head shall evaluate the bids to determine the lowest responsible bidder based upon the criteria set forth in Section 2.28.280(1). A public bid opening is not required.

C. Determination. The department head shall determine the lowest responsible bidder and award a written contract to such bidder. If only one bid is received, the bidder may be required to furnish a detailed cost proposal for review and the bid award may be subject to subsequent negotiation. All information relating to the bids obtained and the selection of the lowest responsible bidder shall be retained by the city in accordance with the city government records access and management ordinance. (Ord. 2/16/2010-2 § 1 (Exh. A) (part), 2010: Ord. 4/21/2009-7 § 1 (Exh. A) (part), 2009: Ord. 10/02/2007-14 § 1 (Exh. A)(2.7.210), 2007: Ord. 1/20/2004-15 (part), 2004. Formerly 2.28.100)

2.28.300 Request for quotes procedure.
Except as otherwise provided herein, all small expenditures of the city shall be awarded to the lowest responsible bidder according to the formal bidding procedure in Section 2.28.280, the informal bidding procedure in Section 2.28.290, or according to the following procedure:

A. Request for Quotes. The department head shall request quotes from at least three potential responsible providers of the supplies, services or construction needed or desired. Such requests and quotes may be made in writing or orally, including by telephone, and shall be made without favoritism or bias. A "Prequalified Potential Vendor List" as described in Code Section 2.28.274 may be utilized. A record of all requests for quotes made hereunder shall be kept by the department head.

B. Evaluation. The department head shall evaluate the quotes to determine the lowest responsible bidder based upon the criteria set forth in Section 2.28.380(1). A public bid opening is not required.

C. Determination. The department head shall determine the lowest responsible bidder and award the contract to such bidder. If only one quote is received, the bidder may be required to furnish a detailed cost proposal for review and the bid award may be subject to subsequent negotiation. All information relating to the quotes obtained and the selection of the lowest responsible bidder shall be retained by the city in accordance with the city government records access and management ordinance. (Ord. 2/16/2010O-2 § 1 (Exh. A) (part), 2010: Ord. 4/21/2009O-7 § 1 (Exh. A) (part), 2009: Ord. 10/02/2007O-14 § 1 (Exh. A)(2.7.211), 2007: Ord. 1/20/2004O-15 (part), 2004. Formerly 2.28.110)

2.28.310 Request for proposals (professional services).

The city manager may determine that it is either not practicable or not advantageous to the city to procure professional services through a competitive process. When such a determination is not made, professional services shall be awarded to the lowest responsible bidder according to the following procedures: The department head shall request proposals from at least three potential, responsible providers of the professional services needed or desired. For large and medium expenditures, the request for proposals and the proposal shall be in writing, including fax or electronic means. For small expenditures, the request for proposals and the proposals may be made in writing or orally, including by telephone, and shall be made without favoritism or bias. A "Prequalified Potential Vendor List" as described in Code Section 2.28.274 may be utilized. A record of all requests for proposals made hereunder shall be kept by the department head.

A. Request for Proposals. A request for proposals shall be prepared by or under the direction of the department head. The request for proposals shall:
1. Describe the professional services to be performed;

2. Set forth the criteria that will be used to evaluate the proposal;

3. State where additional information may be obtained; and

4. Reserve to the city the absolute right to reject any and all proposals for any reason the city shall determine.

B. Notice. For large expenditures, the request for proposals shall be published once in a newspaper of general circulation within the city limits at least ten days prior to the date proposals are due.

C. Amending Proposal. The request for proposals may be amended, supplemented, or canceled at any time prior to the specified due date when the procurement officer determines that such action is in the best interest of the city. The reasons for the amendment or cancellation of the proposal shall be in writing and shall be made a part of the city's records.

D. Opening Proposals. The proposals shall be opened by the department head as soon as possible after the specified due date. A public opening is not required.

E. Recording Proposals. The amount of each proposal and the name of the bidder shall be recorded and open to public inspection during regular business hours for a period of not less than thirty days after the proposals are opened.

F. Evaluating Proposals. The proposals shall be evaluated within a reasonable time by the department head to determine the lowest responsible bidder based upon the following objectively measurable criteria as set forth in the request for proposals:

1. Price. The total price of the proposal.

2. Time. The time limit within which the bidder can provide the services.

3. References. The character, integrity, reputation, judgment, experience and efficiency of the bidder and the quality of previous services received from the bidder.

4. Local Bidder. Preference shall be given to local bidders.

5. Other. Any other measurable criteria as set forth in the request for proposals.
G. Determination. The department head shall determine the lowest responsible bidder and award the contract to such bidder. If only one quote is received, the bidder may be required to furnish a detailed cost proposal for review and the bid award may be subject to subsequent negotiation. All information relating to the proposals obtained and the selection of the lowest responsible bidder shall be retained by the city in accordance with the city government records access and management ordinance. All contracts of twenty-five thousand dollars or more (large expenditures) must be approved in writing by the city manager. (Ord. 8/10/2010O-6 § 1 (Exh. A) (part), 2010: Ord. 2/16/2010O-2 § 1 (Exh. A) (part), 2010: Ord. 4/21/2009O-7 § 1 (Exh. A) (part), 2009: Ord. 10/2/2007O-14 § 1 (Exh. A 2.7.2), 2007: Ord. 1/20/2004O-15 (part), 2004. Formerly 2.28.120)