

COMPARED VERSION
COMMITTEE SUBSTITUTE TO ORIGINAL ORDINANCE

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 240324

Amending Chapter 3 of the Code of Ordinances of the Kansas City, Missouri, Contracts and Leases, by repealing Section 3-31, Contract Award, and enacting in lieu thereof a new section of like number and subject matter: that requires departments to reevaluate qualifications by going through the architect and engineering selection committee process if the highest ranked proposer's contract amount exceeds \$700,000.00 for design professional contracts or \$7,000,000.00 for design-build contracts and codifying a state law change.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 3, Code of Ordinances, entitled "Contracts and Leases," relating to Contract Award, is hereby amended by repealing Section 3-31, and enacting in lieu thereof a new section of like number and subject matter, to read as follows:

Sec. 3-31. Contract award.

(a) *General ~~standard~~ standards.* Except as otherwise provided in this division 2, all contracts in which bids or proposals were required shall be awarded to the lowest and best bidder or best proposer as determined by the city in the city's sole discretion, after due opportunity for competition.

(b) *Design professional contracts.* A qualification based selection shall be made based upon the statement of qualifications that was required to be submitted and any supplement thereto as requested by the city. The process for making the qualification based selection shall be determined by the estimated dollar value of the design professional contract as follows, provided however that the failure to utilize the applicable process shall not invalidate any public improvement procurement or any contract:

- (1) *Contracts exceeding \$600,000.00.* The city shall convene an architect and engineering selection committee, which committee shall rank the firms from most to least qualified. The committee shall be comprised of at least one member designated by the city manager and two members designated by the director of the contracting department. The mayor may elect to be a member of the committee or may designate a council member to serve on the committee and if the mayor so elects, the director of the contracting department shall designate one less member to the committee.
- (2) *Contracts less than \$600,000.00.* The director of the contracting department shall rank the firms from most to least qualified. If the cost proposal from the highest ranked firm is an amount that exceeds \$700,000.00, the director shall not

recommend award and the director shall convene an architect and engineering selection committee in accordance with Section 3-31(b)(1).

The city shall thereafter negotiate a contract for the project with the firm selected as most qualified. If the city is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated. The city shall then undertake negotiations with another of the qualified firms selected. If there is no agreement with the second firm, negotiations with such firm shall be terminated. The city shall then undertake negotiations with the third qualified firm. If the city is unable to negotiate a contract with any of the selected firms, the city shall reevaluate the necessary architectural, engineering or land surveying services, including the scope and reasonable fee requirements, and again conduct a qualification based selection process. Notwithstanding the foregoing, nothing herein shall obligate the city to undertake any negotiations if the city shall have determined to terminate the solicitation for any or no reason.

(c) *Design-build contracts.* Contracts shall be awarded as is appropriate to the manner in which the contract was solicited, as follows:

- (1) *Best value.* To the responsible design-build firm whose proposal is evaluated as providing the best value to the city based on any factors and method and formula included in the request for proposals. The city may elect to establish a fixed dollar budget for the project such that all proposers are operating under the same monetary limitations.
- (2) *Qualification-based.* A qualification based selection shall be made based upon the statement of qualifications that was required to be submitted. The process for making the qualification based selection shall be determined by the estimated dollar value of the design-build contract as follows, provided however that the failure to utilize the applicable process shall not invalidate any public improvement procurement or any contract:
 - i. *Contracts exceeding \$6,000,000.00.* The city shall convene an architect and engineering selection committee, which committee shall rank the design-builder from most to least qualified. The committee shall be comprised of one member designated by the city manager and four members designated by the director of the contracting department. The mayor may elect to be a member of the committee or may designate a council member to serve on the committee and if the mayor so elects, the director of the contracting department shall designate one less member to the committee.
 - ii. *Contracts \$6,000,000.00 or less.* The director of the contracting department shall rank the design-builder from most to least qualified. If the cost proposal from the highest ranked firm is an amount that exceeds \$7,000,000.00, the director shall not recommend award and the director shall convene an architect and engineering selection committee in accordance with Section 3-31(c)(2)(i). The city shall thereafter negotiate a contract for the project with the firm selected as most qualified. If the city

is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated. The city shall then undertake negotiations with another of the qualified firms selected. If there is no agreement with the second firm, negotiations with such firm shall be terminated. The city shall then undertake negotiations with the third qualified firm. If the city is unable to negotiate a contract with any of the selected firms, the city shall reevaluate the scope of the project and again conduct a qualification based selection process. Notwithstanding the foregoing, nothing herein shall obligate the city to undertake any negotiations if the city shall have determined to terminate the solicitation for any or no reason.

- (3) *Two-phase.* The design-builders shall be ranked from most to least qualified in such manner as provided in subsection (c)(2) and a value shall be assigned based upon the rankings. The city shall thereafter evaluate and score any proposal or bid required to be submitted and shall identify the best proposal or the lowest and best bid, as applicable. The city shall thereafter negotiate a contract for the project with the firm selected as having the best proposal or execute a contract for the project with the firm having the lowest and best bid. If the city is unable to negotiate a satisfactory contract or execute a contract, the city shall then proceed to the next best proposal or next lowest and best bid, and such process shall continue in similar fashion unless the city shall have determined to terminate the solicitation.

(d) *Standards for Construction Contracts that exceed \$25,000.00.* The city shall award the contract to the lowest, responsive, responsible bidder or bidders as determined by the city in the city's sole discretion. This provision shall be automatically repealed if the requirements of Section 8.250, RSMo are repealed or amended.

Approved as to form:

James Brady
Senior Associate City Attorney