

CITY OF FERNDALE PROCUREMENT POLICY

This policy applies to the procurement of all goods and services by the City of Ferndale. Deviations from this policy must be approved by Council. This policy supersedes all previous resolutions of Council concerning procurement of goods and services, including professional services contracts.

1. Preference for competitive bidding:

The City shall procure goods and services by competitive bidding unless this policy provides otherwise.

2. Definitions:

- a) Agent: An official representative of a party. Also, a person or entity that may convey information to a party.
- b) Bid, or solicitation: An invitation for bid, request for proposal, or any other request for prices, including all specifications, plans, and other supporting documents.
Throughout this policy the term "bids" will be considered to universally encompass the terms request for bids (RFB), request for quotation (RFQ), request for proposal (RFP) and proposal.
- c) Bid bond: A bond a potential bidder is required to submit when submitting a bid.
- d) Contractor: A private entity that has or desires a business relationship with the City. Throughout this policy, the term "contractor" will be considered to universally encompass the terms vendor and supplier.
- e) Delinquent: A debt owed to the City is delinquent when it is past the due date and without repayment arrangements that are satisfactory to the City.
- f) Entity: An individual or a business. The latter includes, but is not limited to, sole proprietorships, partnerships, corporations and any form of organization recognized by the law of any state.
- g) Invitation for bid: The information provided to bidders to allow them to make a bid.
- h) Minor informality: A minor deviation from the prescribed form that, when corrected, is not prejudicial to other bidders nor harms the City in any way.
- i) Notice of bids: The publication and/or posting that the City is requesting entities to bid. The notice informs the bidders where to obtain the invitation for bid and does not include all of the information in the invitation for bid.
- j) Professional services: A type of personal service to the public that requires as a condition precedents to the rendering of the service the obtaining of a license or other legal authorization. Professional services include, but are not limited to, services rendered by certified or other public accountants, architects, professional engineers, land surveyors, and attorneys at law. [MCL 450.222(c)]
- k) Quotation: A response by an entity to a direct request by the City for pricing and availability of goods or services. A quotation is not a response to an invitation for bid.
- l) Responsible bidder: A bidder whose bid meets all of the requirements specified in an invitation for bid, other than minor informalities.

- e) An invitation for bid must advise the bidder that it is required to obtain any required permits from the appropriate authorities.
- f) An invitation for bid shall set forth all requirements the bidder must fulfill for the bid to be evaluated by the City. Solicitations must be based on a clear and accurate description of the technical requirements:
 - 1) Complete information should be provided including, but not limited to, quantity, description, delivery requirement, special conditions, drawings, specifications, bid due date and time, etc.
 - 2) Specifications or requirements should not unduly restrict competition.
 - 3) Whenever a "brand name or equal" description is used to define performance or other salient requirement, the specific features of the named brand must be clearly specified.
- g) An invitation for bid may require potential bidders to submit a bid bond.
- h) An invitation for bid may require the submission of product samples, descriptive literature, technical data, or other material. An invitation for bid may provide for any of the following before award:
 - 1) inspection or testing of a product for such characteristics as quality or workmanship;
 - 2) examination of such elements as appearance, finish, taste, or feel; or
 - 3) other examinations to determine whether a product conforms with other purchase requirements.
- i) For professional services, the City may choose not to use cost as an evaluation factor, but the rationale for excluding cost must be disclosed before the invitation to bid is issued.
- j) An invitation for bid may incorporate documents by reference.

4. Notice of Bids:

- a) Notice to potential bidders shall be made according to legal requirements, including those set by resolution of Council and, when practicable, by the following methods:
 - 1) notices mailed to prospective contractors on the compiled bidders lists;
 - 2) notices posted in City Hall;
 - 3) newspaper(s) of record; and
 - 4) publication in other appropriate media, including professional magazines and journals and postings in electronic media.
- b) The City may require payment of duplication costs or a deposit for supplying the solicitation or supporting documents.
- c) The responsible procurement officer shall provide notice of an invitation for bid to a prospective contractor upon request.
- d) Nothing in this section limits the additional forms of public notice that the City may use to reach prospective contractors located in the state.
- e) The published notice shall include a provision that any entity may submit its name to be notified of potential bids. City Departments shall compile a list of potential bidders, the type of bids for which they wish to be directly notified and the date of placement on the list. A copy of the list must be provided to the Clerk. Any entity wishing to be placed on the list shall contact the Department or the Clerk, who shall forward such requests to the appropriate Department. If there is a discrepancy

- e) Nothing in this section permits a contract award to a bidder submitting a higher quality item than that designated in the invitation for bid if the bidder is not also the lowest bidder as determined under (c) of this section. This section does not permit negotiations with a bidder.
- f) The City is not obligated to accept the lowest bid, or any bid.
- g) When awarding a bid for professional services where cost is an evaluation factor, the City may choose in exception to the lowest overall cost criteria of subsection (c) if it determines that the City's best interests would be better served.

8. Post-awarding procedures:

- a) After a bid is awarded, the responsible procurement officer shall promptly notify in writing the entity awarded the bid. If the invitation for bid or agreements with other agencies or those agencies' regulations require specific notification procedures, those procedures must be followed.
- b) Following award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file.
- c) Notice of intent to award does not constitute award of a contract. The notice of intent to award must include:
 - 1) reference to the pertinent invitation for bid;
 - 2) the name of the successful bidder;
 - 3) a brief description of items awarded; and
 - 4) a statement of the proposed contract amount.

9. Conflicts:

- a) The Charter, Chapter XVII, Section 11, and the Contracts of Public Servants with Public Entities Act (PA 317 of 1968, MCL 15.321-328) govern conflicts of interest. Both of these documents shall be available in the City Clerk's office.
- b) The City shall not enter into a contract with a City employee or City officer, or a member of that person's immediate family. For purposes of this section, immediate family shall mean a spouse, child (including stepchild or adopted child), grandchild, brother, sister, parent, or grandparent of the City employee or City officer. City employee shall include all full and part-time employees with the City of Ferndale.
- c) Bids or proposals submitted by an individual or firm that developed the specifications or plans (including a RFP) for a project will not be considered.

10. Communication with potential bidders:

Prior to the opening of sealed bids:

- a) No employee or agent of the City shall disclose or cause to be disclosed the following information to a bidder or agent:
 - 1) the terms of another bidder's quotation or proposal;
 - 2) the fact that bids or quotes have been solicited or received from other bidders (A bidder may only be advised that the City is seeking sealed proposals.); and
 - 3) the fact that bids have not been received from other bidders.

- 8) trade and product shows;
- 9) manufacturers' catalogs and sales literature;
- 10) marketing representatives; and
- 11) periodicals/magazines/professional journals.

12. Exceptions to Competitive Bidding Practices:

- a) Competitive bidding is not required in the following cases:
 - 1) Exact replacement/repair part(s) of a larger component ordered directly from a manufacturer or manufacturer's representative where no other sources exist.
 - 2) Copyrighted material or media items ordered directly from a producer/publisher.
 - 3) Items ordered from the only known source of supply. Such orders, when above Charter and Council requirements, require written justification.
 - 4) Service by a manufacturer or manufacturers representative for previously purchased products.
 - 5) Items available from the City or from other governmental agencies.
 - 6) Under a unit-price contract, the City Council may authorize additional units of work at the same unit price as long as the total contract price does not increase by more than 25%.
 - 7) Four-fifths of the City Council votes to exempt the contract from the competitive bidding process (City Charter, Chapter XVII, § 1) if the amount is above the required threshold (\$5,000.00, unless increased by resolution of Council to \$10,000.00).

13. Irregularities in the Bid Process:

- a) Conditions under Which Bids or Proposals May Be Accepted
 - 1) Envelope Not Sealed: An unsealed envelope may be treated as a minor informality, and is not cause for rejection of the bid.
 - 2) Erasures or Corrections: Erasures or corrections to a bid may be treated as minor informalities and are not cause for rejection of the bid. If erasures or corrections are noted at the time of opening and reading of bids, however, an oral announcement will be made and a notation included in the bid file.
 - 3) Failure to Submit Subcontractors List: Failure to include a subcontractors list with a bid is not cause for rejection of the bid unless it is specified in the solicitation that the subcontractors list must be included with the bid. The requirement for the submission of a subcontractors list is for the purpose of determining the qualifications of the subcontractors. The failure to include a subcontractors list may be corrected by the bidder by submission of a subcontractors list within a reasonable time as specified by City.
 - 4) Modification of Bids before Opening: Bidders may modify bids, or correct mistakes discovered before the time and date set for opening, provided the modifications or corrections are made in writing. If, before award, a procurement officer knows of an error in a bid, the officer shall notify the bidder of the error.

- 3) Late Bids: Bids not received at the date, time, and location specified in the invitation for bid shall not be considered. Late bids will be so noted on the envelope and will be returned to the bidder. A notation will be recorded in the bid or proposal file. It is the responsibility of the bidder to ensure that the bid or proposal is received on time. A bid received after the time and date set for the receipt of bids in the invitation for bid or subsequent amendment is late. A correction or withdrawal of a bid received after the time and date set for opening of bids at the place designated for opening is late. A late bid, correction, or withdrawal shall not be accepted unless the delay was due to an error of the City.
 - 4) Withdrawal of Bids: Bids may be withdrawn at any time before the date set for opening. Bids may not be withdrawn after opening except as allowed by the City.
 - i) A bid shall be corrected, modified or withdrawn only by written request received in the office designated in the invitation for bid before the time and date set for opening.
 - ii) A request under i) of this section must provide authorization for the person making the correction or withdrawal to do so.
 - iii) If a bid is withdrawn, the bid security, if any, shall be returned to the bidder.
 - 5) All documents relating to the correction, modification, or withdrawal of a bid shall be included in the appropriate procurement file. If a decision is made to permit the modification or withdrawal of a bid, or to cancel an award or contract based on a bid mistake, the responsible procurement officer shall prepare a written determination supporting the decision.
- d) Inadvertent Errors Discovered After Opening But Before Award: Inadvertent errors by a bidder discovered after opening but before award, other than minor informalities, may not be corrected. If a bidder submits proof that clearly and convincingly demonstrates that an inadvertent error other than a minor informality was made, the City may permit the bidder to withdraw the bid.
- 1) Correction of a mistake, which would displace an otherwise successful bidder, is not permitted.

14. Exceptions to This Policy:

The City Council may make or authorize exceptions to this policy when it determines that it would be in the City's best interests to do so. The Council shall expressly note when it makes or authorizes an exception. Requests for exceptions to this policy should be made to Council before the procurement process begins.