

City of Rochester

Policy and Procedures for Procurement of Professional Services and Requests for Proposals Ordinance No. 2012-318

Purpose

This document is intended to provide City employees with an understanding of the basis for securing professional services and a process for securing those services, and includes guidelines for drafting Requests for Proposals and procedures for evaluating and selecting proposals.

Definitions

Professional Services- services provided by a consultant, vendor or service provider which require special skills, scientific or technical knowledge, training or expertise, the use of professional judgment or discretion or a high degree of creativity. These are services that cannot be competitively bid and awarded based on price, because the cost of services, although a factor, will not ensure that the City obtains the best services for the best value.

Request for Qualifications- a document used to solicit information about the expertise, knowledge and experience needed for a particular project or multiple projects and used to evaluate and pre-qualify consultants who will subsequently be requested to submit proposals for a specific project.

Request for Proposal - a document used to describe the professional services required by the City for a project, the requirements for submitting a proposal and the evaluation process for selecting a consultant.

Procedures

Step 1. Determine whether services are professional services.

When services required by a City Department (Department) involve specialized skills, scientific or technical knowledge, training and expertise, use of professional judgment or discretion, or a high degree of creativity, the services sought are professional services and the City will enter into a Professional Services Agreement (PSA). PSAs are an exception to the requirement of NYS General Municipal Law §103 that public works contracts must be competitively bid in a formal bid process mandated by law. The City may obtain professional services through a less formal process, either through negotiation or through a Request for Proposal (RFP) process.

Examples of PSAs which have been upheld by the courts include contracts with physicians, attorneys, surveyors, engineers, architects, insurance brokers, computer programmers and contracts for ambulance services, environmental contamination clean up, writing, editing, and pharmaceutical services.

Whenever there is a question about whether services are "professional" services, or if a contract involves a combination of professional services and commodity purchases (e.g., the purchase of computer hardware as part of a contract for customized software and training) or if a contract is a combination of professional and non-professional services, (e.g., specialized environmental clean-up services combined with site restoration and landscaping services), the Law

Department should be consulted for a determination as to whether a PSA is appropriate or whether a bid contract or a combination of both must be used.

Step 2. Determine whether Request for Proposal is required

Once it has been determined that a PSA will be used to obtain the services, the process for obtaining a consultant will depend on several factors, including the monetary value of the contract, the nature of the work, the term of the contract and the City's previous experience with this or similar contracts. Unlike a public works contract, which by law is subject to a formal competitive bidding process, professional services may be secured "through negotiation or through solicitation of proposals" (section 2.1 of the City's Procurement Procedures.)

The benefit of the Request for Proposal ("RFP") process is that it allows the City to explore the market of potential providers for creative approaches, specialized experience, quality of service, and cost differentials.

Generally, an RFP should be prepared when any of the following criteria occur:

- The service will be for more than one year
- The compensation amount will be greater than \$35,000
- 3-5 years have transpired since the last RFP for the service was issued,
- A new service is being sought and/or
- The service involves technology or another field where frequent changes in standards and technologies are expected.

Even when any or all of these thresholds have been met, there may be unique situations when it is not in the City's best interest to secure consultant services through an RFP process. The Department seeking professional services must weigh the cost and time of preparing an RFP and undertaking the review process against the benefit in quality, productivity and cost savings to the City. When the contract amount is small, where we have a satisfactory work history with a particular consultant or where we are already knowledgeable about the market and can effectively negotiate a contract directly with the limited number of consultants that have the skills we need, an RFP may not be necessary.

Whenever it is determined that an RFP will not be used, a written justification for this decision must be prepared. In the case of PSAs which exceed \$10,000 and require approval by City Council, the Department must prepare and maintain on file, justification for opting not to prepare an RFP and to engage a consultant through direct negotiation. The requirement for providing this information to City Council is discussed in Step 6, below). For PSAs of less than \$10,000, justification for not using an RFP should be prepared and maintained on file in the Department. For recurring small value PSAs (e.g. \$600 dance classes conducted at recreation center) it is adequate to prepare and maintain on file a general description of the services and justification for using particular consultants on a recurring basis. A form for providing the required justification is attached.

Written justification for not using an RFP must be signed by the Department's Commissioner, Chief or Director and should include the following:

- Description of the nature of the services being sought

- Amount of the proposed compensation for the PSA with an explanation of how pricing was determined to be reasonable and the best value to the City
- Description of any prior history with the chosen consultant and explanation of why the Department believes it is in the City's best interest to continue to use that consultant
- Description of any emergency or unique circumstances which the Department has determined would jeopardize a project or otherwise be detrimental to the City if a full RFP process were followed
- Where the number of qualified and available specialized professionals is limited, making an RFP impractical, a description of the Department's need for such consultants and the Department's knowledge of the market.
- Where a project has multi-year State or Federal funding, explanation of why it is in the best interest of the project and the City to continue with the same consultant (e.g., where the design consultant on a project is retained for resident project representation services)

NOTE: Even when a full RFP is not required because none of the RFP criteria have been met, less formal letters seeking price quotes and service descriptions should be sent to multiple potential consultants, whenever there is a reasonable opportunity to obtain lower prices or to secure new consultants with the necessary skills. All justifications for not preparing an RFP, and any other documents related to the RFP process, must be maintained by the Department, for a period of six (6) years after expiration or termination or final payment under the agreement, whichever is later.

Step 3. Preparing the RFP

When it has been determined that an RFP must be prepared, each Department is responsible for preparing the document and undertaking the proposal review process. There is no standard RFP form – the service needed dictates how the RFP will be structured. However, there is information that should be included in every RFP, including:

Living Wage Requirement

For any PSA that will equal or exceed \$50,000, the consultant will be required to comply with the City's Living Wage requirements. The RFP shall require the consultant to include with their proposal a written commitment to pay all "covered employees" a "living wage", as those terms are defined in the *Rochester Living Wage Ordinance* that can be found in Section 8A-18 of the Municipal Code of the City of Rochester. In addition, the consultant must provide a list of job titles and wage levels of all "covered employees" in each of the years for which a PSA is sought.

Minority/Women Business Enterprise Goals

The City intends to encourage Minority and Women Owned (M/WBE) businesses to actively participate in opportunities to obtain PSA's with the City. Therefore, each Department is responsible for reviewing the list of New York State certified M/WBE businesses maintained by the Bureau of Purchasing (available on the Employee Portal), and sending the RFP to every M/WBE on the list for the relevant services covered by the RFP.

In addition to this general requirement, Departments should be aware that Ordinance No. 94-213 establishes specific M/WBE goals for the following professional services: architectural/engineering services, personnel training and testing, and advertising and media

professional service contracts. When a City funded PSA is requested for any of these professions, Departments must take the steps outlined below to meet these M/WBE goals. For this purpose, the Purchasing Office maintains a City approved M/WBE list to meet the City's goals. In addition to actively recruiting potential M/WBE firms for the contract, preference shall be given to otherwise qualified M/WBE firms through additional weighting. The City intends to achieve the M/WBE participation goals set by Ordinance No. 94-213, for these professional services. The Ordinance specifies the percentage of dollars spent during a fiscal year that will be performed by M/WBE firms, in the following categories:

Ordinance No. 94-213 M/WBE Goals - % of Total Expenditures per FY			
Contract Type	African American Goal	Hispanic Goal	Woman Bus. Enterprise Goal
Architectural/ Engineering Services	2.1%	0.6%	3.5%
Personnel Training and Testing	6.6%	0.0%	21.7%
Advertising and Media	6.6%	0.0%	16.7%

Therefore, when a PSA for these listed professional services is being sought, that uses City funding, and there are no overriding state or federal requirements or restrictions, Departments must demonstrate the steps they have taken to ensure that the City meets these goals. The first step to meet the goals is to ensure that M/WBE firms are notified about the RFP, by ensuring that all the vendors for the requested service(s) on the City approved M/WBE list maintained by Purchasing are notified about the RFP. If a Department knows of one or more M/WBE firms that are not on the list provided by Purchasing, it should send the additional firm(s) the notification about the RFP and copy Purchasing so that Purchasing records can be updated. If one or more M/WBE firms responds to the RFP, the Department must give additional weighting of 10% to the City approved M/WBE firms as part of the evaluation process. This gives otherwise qualified M/WBE firms preference, which will assist the City in meeting the M/WBE goals for these professions. The specific goals for each of these professions can also be found on the Employee Portal.

Additional Requirements

The RFP shall further include the following information:

- Clear and detailed description of the scope of professional services being sought
- Timeline – including deadlines for questions, completed proposals, and anticipated notification of the selected consultant. Deadlines or timeframes for the City should include a statement that the City may alter its timeframes as necessary
- Statement that there *will* or *will not* be a pre-proposal conference or meeting of interested consultants
- Statement that questions must be submitted in writing, preferably by e-mail, and confirmation that all questions and our responses will be shared with all who have indicated an intent to submit a proposal and have provided an e-mail address

- City contact information, with caution that only the named person(s) should be contacted
- Statement that the City may amend the RFP upon notification to all potential vendors
- Statement that the City may request additional information from potential vendors as necessary to assist the City in evaluating a proposal
- Statement requesting references and/or description of experience with similar projects
- Statement that the RFP may be withdrawn by the City for any reason and that the City shall have no liability for any costs incurred in preparing a proposal
- Statement that the proposal and all materials submitted with the proposal shall become the property of the City and will be subject to the NYS Freedom of Information Law (FOIL) and that if any proprietary information is submitted with the proposal it must be clearly identified and a request to keep such information confidential must be submitted
- Statement that the selection of a consultant is within the City's sole discretion, that no reasons for rejection or acceptance of proposals are required to be given and that the decision will be based on qualifications and not solely on cost.
- Statement that the successful consultant will be required to enter into a City PSA (the PSA form must be attached to the RFP)
- Statement that for all PSAs that exceed \$10,000, including multiple agreements with the same consultant for the same or similar services, that may result in an aggregate in one fiscal year that exceeds \$10,000, City Council approval will be required
- When a PSA is City funded, statement that preference will be given to consultants located in the City of Rochester, through an additional weighting of 10%.
- Description of the criteria that will be used to evaluate proposals, indicating priorities, although it is not recommended that the actual weighting system to be used be included in the RFP

Examples of recent RFPs are posted on the Employee Portal for your review.

Step 4. Issuing the RFP

It is strongly recommended that at least three proposals should be solicited by direct contact with potential consultants. In order to reach the largest possible audience of potential consultants, the RFP must be posted on the City Website. If the cost is justified, RFPs should be published in local newspapers. If the cost and scope of the contract will require the services of national providers, the RFP should be published in the appropriate trade publications. When a project will be City funded, Departments must conduct research of city businesses and solicit any qualified city consultants.

Request for Qualifications

NOTE: For certain PSAs, a Department may prequalify a number of potential consultants with particular skills, where the Department wants to maintain a pool of qualified consultants who will be used on a recurring basis over a period of years, (e.g., specialized services of an engineering firm). In such case, the Department may issue a Request for Qualifications, describing the nature of the services that will be required and requesting that potential consultants submit a Statement of Qualifications (SOQ). Based on the SOQ's, the Department will select a number of consultants that are qualified to perform the services needed, and seek City Council approval of multi-year Term Agreements with those chosen consultants. As each project arises, the Department will submit RFPs only to the pre-selected consultants already under contract and will not be required to post the RFP on the City's website or to distribute the RFP more widely.

Step 5. Reviewing proposals

Departments must develop a rating system for evaluating and rating the proposals, using an objective qualitative process that is targeted to the Department's specific needs. Because of the wide range of City projects, no "one size fits all" rating system has been developed. The Department should determine the weight given to each criterion, based on the importance of that criterion to the Department. Some suggested evaluation criteria for review include:

- professional qualifications
- experience with the same or similar projects
- ability to complete project based on staffing and other resources
- quality of the proposal
- costs
- compliance with technical requirements of the project.
- location of consultant's offices in the City (with a 10% weighting for fully City funded projects)
- compliance with City approved M/WBE goals (with a 10% weighting for fully City funded projects)

Rating systems should be established before proposals are received. Examples of rating systems appear in the RFPs posted on the Employee Portal.

Proposals should be reviewed by a review team of a minimum of three people. Reviewers can be non-City staff when appropriate, although non-City staff should be used only when necessary to obtain technical or other unique knowledge or experience not available among City employees. It can also be helpful to have members of the review team from outside the Department to provide objectivity and outside perspective. It is expected that in most cases after evaluation of the proposals, at least two consultants will be chosen for interviews and/or presentations, although interviews are not required and may not be necessary if the proposal provides sufficient basis for final choice of a consultant. The final selection should be transmitted to the Bureau or Department head, as required by the Department's procedures.

The review team must document the basis for their recommendation. The review team's written recommendation should identify the team members and the team leader, by City Department or by other entity with which the team member is associated. The recommendation should describe the reasons for choosing the consultant based on the criteria, including the use of any weighted criteria. It should also include the reasons for choosing a consultant prior to obtaining detailed cost quotations or when the chosen consultant does not have the lowest cost proposal. The Department must prepare and maintain on file, the final decision on the RFP.

It is essential that every precaution be taken to avoid even the appearance of a conflict of interest, favoritism, or preference based on friendships or factors other than merit.

NOTE: All proposals submitted in response to an RFP and the City's proposal rating system will be subject to FOIL. The names of the reviewers are also subject to FOIL, although identification of which reviewer made which numerical rating and any written comments or explanations of the reviewer's ratings will not be. All proposals, rating forms and all other RFP documents must be maintained for a period of six (6) years after expiration or termination or final payment under the agreement, whichever is later.

Step 6. City Council Action

Any PSA with compensation greater than \$10,000 or that extends for a term of more than one year, must be authorized by City Council. The Department must prepare and submit a transmittal letter following the process set forth in the document, *Guidelines for Writing & Submitting Items to City Council*, which is available on the Employee Portal.

When an RFP process has been used to select the vendor, a description of the process must be included in the transmittal letter or in a chart or similar attachment submitted to City Council with the transmittal, which shall include:

- The date the RFP was issued
- The methods used to solicit proposals, including, as appropriate:
 - Posted on the City website
 - Direct solicitation to known providers
 - Publication in trade journals, etc. (where and when)
- A list of consultants that submitted proposals and their location (city, state)
- The method of reviewing proposals
 - Composition of review team
 - Evaluation criteria, including the use of any weighted criteria
 - The ratings for the winning proposal
 - The reasons for choosing the selected consultant

When an RFP has not been issued for a PSA, the transmittal letter must include a justification, as described above, for opting to retain the selected consultant through direct negotiation.

The transmittal or attachment must include, where applicable, a statement regarding compliance to the *Living Wage Ordinance* and *MWBE goals*.

**Justification for Decision to Award a Professional
Services Agreement Through Negotiation, Without an RFP**

As described in Step 2 of the Policy and Procedures for Procurement of Professional Services and Requests for Proposals, an RFP should be prepared whenever any of the RFP criteria are met. In unique situations where an RFP will not be beneficial to the City, a decision may be made to award a contract for professional services through negotiation, without an RFP. In such cases and whenever an RFP is not required by the Policy, justification for not using an RFP must be prepared and maintained on file, either electronically or by hard copy. Written justification must be submitted to City Council for all PASs that exceed \$10,000. Justification for a negotiated agreement must be signed by the Department Commissioner, Chief, or Director and should address the following factors:

1. Description of the professional services being sought.
2. Description of the amount of the proposed compensation for the PSA with an explanation of how negotiated pricing was determined to be reasonable and best value to the City.
3. Description of the City's prior history with the consultant and explanation of why the Department believes it is in the City's best interest to continue to use that consultant and why it would not be beneficial to solicit other potential consultants.
4. Description of any emergency or unique circumstances that are the basis of the Department's determination that the project would be jeopardized or how it would otherwise be detrimental to the City if a full RFP process were followed.
5. Confirmation that the number of qualified and available specialized professionals is limited, making an RFP impractical. Include a description of the Department's need for such specialized consultants and the Department's knowledge of the market.
6. Where a project has multi-year State or Federal funding, explanation of why it is in the best interest of the project and the City to continue with the same consultant (e.g. where the design consultant on a project is retained for resident project representation services).