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**Title:** Ordinance amending the Pittsburgh Code, Title One: Administrative, Article VII: Procedures, Chapter 161: Contracts, in order to clarify definitions of contract types, correct conflicting language between commodities and professional services and add additional categories for requests to waive the competitive bidding requirements to be in line with current practice and national standards.

**Sponsors:**

**Indexes:** PGH. CODE ORDINANCES TITLE 01 - ADMINISTRATIVE

**Code sections:**

**Attachments:** 1. Summary 2020-0120

Date	Ver.	Action By	Action	Result
3/13/2020	2	Mayor	Signed by the Mayor	
3/10/2020	2	City Council	Passed Finally	Pass
3/4/2020	2	Standing Committee	Affirmatively Recommended	Pass
2/26/2020	2	Standing Committee	Held in Committee	Pass
2/26/2020	2	Standing Committee	AMENDED	Pass
2/26/2020	2	Standing Committee	RECOMMITTED	Pass
2/26/2020	2	Standing Committee	Held in Committee	Pass
2/18/2020	1	City Council	Read and referred	

Ordinance amending the Pittsburgh Code, Title One: Administrative, Article VII: Procedures, Chapter 161: Contracts, in order to clarify definitions of contract types, correct conflicting language between commodities and professional services and add additional categories for requests to waive the competitive bidding requirements to be in line with current practice and national standards.

WHEREAS, the report produced for the City of Pittsburgh by the National Institute of Government Procurement recommended the expansion of categories for Waivers of the Competitive Process to be in line with national standards, and

WHEREAS, the City wishes to adopt these and other best practices in the field of procurement;

**The Council of the City of Pittsburgh hereby enacts as follows:**

**Section 1.** The Pittsburgh Code, Title One, Administrative; Article VII, Procedures; Chapter 161, Contracts. No amendments proposed.

§ 161.01 - CONTRACT AUTHORIZATION.

- (a) Every contract relating to City affairs shall be authorized by ordinance or resolution of City Council and shall be awarded as required by applicable law and authorized regulations. Except in the case of contracts for the purchase of general material, supplies and equipment, or for general maintenances and services or for open-end professional services contracts, such ordinance or resolution shall designate the maximum amount authorized for such contract, and the account from which payment shall be made.
- (b) The City may enter into one (1) or more intergovernmental cooperation agreements with Allegheny County regarding joint purchasing on the City's behalf. Such intergovernmental cooperation agreement and any amendments shall be presented to City Council for its approval on an annual basis.
- (c) The Director of the Office of Management and Budget may also enter into additional joint-purchasing agreements or participate in other joint purchasing associations (e.g., COGS) on behalf of the City, subject to annual authorization of Council, and requirements of applicable law.

## SEE ATTACHMENT

**Section 2.** The Pittsburgh Code, Title One, Administrative; Article VII, Procedures; Chapter 161, Contracts; Section 161.01A, Required Approvals from City Council for Designated City Contracts, is hereby amended as follows:

- (a) The following definitions are applicable to this Chapter unless otherwise specifically defined in other sections:
  - (1) *COMMODITIES*: Materials, supplies, goods, equipment, and/or personal property, including pre-packaged or "canned" computer software and intellectual property rights/licenses in relation thereto and combinations of any of the items included in this definition.
  - (2) *CONSTRUCTION CONTRACTS*: Those contracts referred to in Section 161.24 of this Chapter that are used by the Department of Public Works, Bureau of Transportation and Engineering for construction projects, including those for construction, alteration, or repair of City buildings or structures.
  - (3) *COUNCILMANIC AMOUNT*: The Councilmanic amount is the monetary amount that triggers a requirement for a written contract pursuant to Section 161.09 of this Chapter. For purposes of this Chapter, the Councilmanic amount is three thousand dollars (\$3,000.00).
  - (4) *PROFESSIONAL SERVICES CONTRACTS*: Those contracts defined in Section 161.02A(a)(4) of this Chapter. This category includes contracts for the professional services of engineers and architects as further referred to in Section 161.24 of this Chapter.
  - (5) *NON-PROFESSIONAL SERVICES*: **Contracts for Services other than Professional Services Contracts as defined in Section 161.02A(a)(4) of this Chapter, and which are** subject to competitive bidding.
- (b) The Mayor, or his/her designee, are authorized to purchase all Commodities and enter into contracts for the furnishing of [n]Non-[p]rofessional [s]ervices subject to the following requirements:
  - (1) All purchases of [c]ommodities and [n]Non-[p]rofessional [s]ervices must be approved by the Director of the Office of Management and Budget or designee, subject to the provisions of Section 161.02, requiring award to the lowest responsible bidder as defined in Part (b) of that Section, or an exception **to the competitive bidding requirement**, enumerated in Part (a) of that Section.
  - (2) All contracts and/or expenditures described in this Section with an estimated value at or below

the [c]Councilmanic [a]Amount may be paid by the City Controller after the corresponding invoices and/or contracts have been placed on a supplemental agenda and approved by City Council resolution.

A standard form detailing the use must accompany the request for it to be considered for approval.

**(3) Departments seeking to enter into commodity or non-professional services contracts with an estimated value between three thousand dollars (\$3,000.00) and thirty thousand dollars (\$30,000.00) will be deemed to have received pre-authorization to solicit bids per Council's inclusion of such purchase or service in the applicable department's operating and/or capital budget for the relevant year.**

**a. To the extent that any such commodity or non-professional services contracts are administered by the Office of Management and Budget, and a consultant or vendor is selected pursuant the quotation or other applicable procedure set forth in this Chapter, the resulting contract may be paid by the City Controller after the corresponding invoices and/or contracts have been placed on a supplemental agenda and approved by City Council resolution. A standard form detailing the use must accompany the request for it to be considered for approval.**

**b. To the extent that any such commodity or non-professional services contracts are administered by the Office of Management and Budget pursuant to a joint-purchasing agreement or through a joint-purchasing association as contemplated in Section 161.01(e), City Council shall receive an annual list of current contracts available for use (including expiration dates) by the City during the upcoming calendar year from the Director of the Office of Management and Budget by no later than September 30.**

**e. To the extent that any such commodity or non-professional services contracts are administered by Allegheny County pursuant to the joint-purchasing agreement as contemplated in Section 161.01(b), City Council shall receive an annual list of current contracts available for use (including expiration dates) by the City during the upcoming calendar year from the Director of the Office of Management and Budget by no later than September 30.**

**(3) Departments seeking to enter into Commodity or Non-Professional Service Contracts with an estimated value of over three thousand dollars (\$3,000.00) shall be deemed to have received pre-authorization to solicit bids via Council's adoption of the relevant annual operating and/or capital budget.**

**[a]A. To the extent that any such Commodity or Non-Professional Services Contracts are administered by the Office of Management and Budget and a consultant or vendor is selected pursuant to the competitive bidding procedures and requirements set forth in applicable law, the resulting contract may be paid by the City Controller after the corresponding invoices and/or contracts have been placed on a supplemental agenda and approved by City Council resolution. A standard form detailing the use must accompany the request for it to be considered for approval.**

**[b]B. To the extent that any such Commodity or Non-Professional Services Contracts are administered by the Office of Management and Budget pursuant to a joint-purchasing agreement or through a joint-purchasing association as contemplated in Section 161.01(c), City Council shall receive an annual list of current contracts available for use (including expiration dates) by the City during the upcoming year from the [Director of the] Office of [Management and Budget] the Controller by no later than September 30.**

**[c. To the extent that any such commodity or services contracts are administered by Allegheny County pursuant to a joint-purchasing agreement as contemplated in Section 161.01(b), City Council shall receive an annual list of current contracts available [for] use by the City**

during the upcoming year from the Director of the Office of Management and Budget by no later than September 30.

- (4) ~~Departments seeking to enter into commodity or non-professional service contracts with an estimated value of over thirty thousand dollars (\$30,000.00) shall be deemed to have received pre-authorization to solicit bids via Council's adoption of the relevant annual operating and/or capital budget.~~
- a. ~~To the extent that any such commodity or services contracts are administered by the Office of Management and Budget and a consultant or vendor is selected pursuant to the competitive bidding procedures and requirements set forth in applicable law, the resulting contract may be paid by the City Controller after the corresponding invoices and/or contracts have been placed on a supplemental agenda and approved by City Council resolution. A standard form detailing the use must accompany the request for it to be considered for approval.~~
  - b. ~~To the extent that any such commodity or services contracts are administered by the Office of Management and Budget pursuant to a joint-purchasing agreement or through a joint-purchasing association as contemplated in Section 161.01(e), City Council shall receive an annual list of current contracts available for use (including expiration dates) by the City during the upcoming year from the Director of the Office of Management and Budget by no later than September 30.~~
  - e. ~~To the extent that any such commodity or services contracts are administered by Allegheny County pursuant to a joint-purchasing agreement as contemplated in Section 161.01(b), City Council shall receive an annual list of current contracts available [for] use by the City during the upcoming year from the Director of the Office of Management and Budget by no later than September 30.~~
- (5) (4) Per Council's inclusion of a specified construction project in the relevant annual adopted capital or operating budget, the Director of the Department of Public Works shall have Council pre-authorization to bid for a contractor for a construction contract pursuant to the competitive bidding procedures and requirements set forth in applicable law. Upon selection of a contractor, the Director of the Department of Public Works must thereafter present an authorizing resolution to City Council for final approval to enter into a construction contract with said contractor. Such authorizing resolution must include a "not-to-exceed" compensation amount, financial system account information, and name of the proposed awardee(s).

**Section 3.** The Pittsburgh Code, Title One, Administrative; Article VII, Procedures; Chapter 161, Contracts; Section 161.02, Competitive Bidding; Exceptions, is hereby amended as follows:

- (a) All contracts shall be awarded to the lowest responsible bidder pursuant to competitive bidding except:
  - (1) Contracts let in cases of emergency as set forth in Section 161.28 below;
  - (2) Those made for improvements, repairs and maintenance of any kind made or provided by the City through its own employees; provided, that this exception shall not apply to construction materials used in a street and bridge improvement;
  - (3) ~~[Those where the unique types, models or pieces of new equipment, articles, apparatus,~~

~~appliances, vehicles or parts thereof, are patented and manufactured products or copyrighted products, insofar as their essential function is concerned;~~ Those products or non-professional services subject to an exemption outlined in §161.02B;

- (4) Those made for public utility service under tariffs on file with the Pennsylvania Public Utility Commission;
  - (5) Those made with another political subdivision or a county, the Commonwealth of Pennsylvania, the United States Government, any agency of the Commonwealth or the United States Government, or any authority, including the sale, leasing or loan of supplies or materials by the Commonwealth or the United States Government or their agencies, but the price thereof shall not be in excess of that fixed by the Commonwealth, the United States Government, or their agencies;
  - (6) Those involving client services provided by not-for-profit agencies;
  - (7) Purchases through intergovernmental or cooperative purchasing plans, established pursuant to applicable law;
  - (8) Those for personal or professional services agreements, the award of which is governed by Section 161.02A herein.
- (b) The term "lowest responsible bidder" means the bidder submitting the lowest bid who has:
- (1) The ability to perform the contract in accordance with the City's specifications in a timely and workmanlike manner;
  - (2) Demonstrated a commitment to the ideal of equal opportunity for all citizens in its own employment practices as well as its use of vendors and subcontractors; and
  - (3) No history of fraudulent or irresponsible behavior in previous dealings with the city.
  - (4) Not obtained any goods or products offered for sale, lease, rental or consignment to the City which were made under sweatshop conditions, as defined in § 161.02(e) of this Chapter.
- (c) The term "highest responsible bidder" means the bidder submitting the highest bid who has:
- (1) The ability to perform the contract in accordance with the City's specifications in a timely and workmanlike manner;
  - (2) Demonstrated a commitment to the ideal of equal opportunity for all citizens in its own employment practices as well as its use of vendors and subcontractors; and
  - (3) No history of fraudulent or irresponsible behavior in previous dealings with the city.
- (d) The City in all contracts requiring competitive bidding shall have the right to reject any and all bids whether expressly so stated in the bid specifications or not.
- (e) Goods and products are not made in sweatshop conditions if all of the following conditions apply in the manufacturing facility in which the goods are made:
- (1) *Wages and benefits.* The manufacturer or employer must pay wages which enable its workers to meet their basic needs for food, shelter, clothing and medical care. The manufacturer or employer also must provide all benefits required by law in their country and must compensate workers for overtime.
  - (2) *Hours of work.* Workers must not be required to work more than forty-eight (48) hours per week, or less if the law of the country in which the manufacturer or employer is located sets a shorter work week.
  - (3) *Worker's rights.* Workers must have the right to speak up about and/or protest conditions in the factories they work in without fear of retaliation and must have the right to form and join unions of

their own choosing without fear of retaliation.

- (4) *Health and safety.* The manufacturer or employer provides a safe and healthy working environment.
  - (5) *Treatment of workers.* No worker may be subjected to physical, sexual or verbal harassment. No worker may be discriminated against in employment in any way on the basis of sex, race, religion, age, disability, sexual orientation, national origin, political opinion or social or ethnic origin.
  - (6) *Child labor.* The manufacturer or employer must not employ anybody younger than the legal age for children to work in the country in which the factory is located, and, regardless of the legal age, must not employ anybody younger than the age of fifteen (15).
  - (7) *Forced labor.* The manufacturer or employer does not use forced labor of any kind, i.e., prison labor, indentured labor, or bonded labor.
- (f) In the case of tie bids from lowest bidder:
- (1) If the goods or services for which there is a tie bid constitute one (1) line item in a solicitation including multiple items, award may be made (at the discretion of the Office of Management and Budget) to the bidder awarded the remaining line items, in the interest of consistency and efficiency.
  - (2) If the goods or services to be purchased are subject to the conditions of Federal or State grant requirements, the applicable provisions of said grant will determine the method of award.
  - (3) If the conditions of neither (1) nor (2) above apply, and if price and all other evaluation criteria are determined to be equal among one (1) or more firms submitting bids, award shall be determined by the following priority:
    - A. If only one (1) of the tie bidders is a vendor located within the limits of Pittsburgh, Pennsylvania, that bidder will be awarded the bid.
    - B. If only one (1) of the tie bidders is a vendor located within the limits of Allegheny County, Pennsylvania, that bidder will be awarded the bid.
    - C. If only one (1) of the tie bidders is an in-state (Pennsylvania business) vendor, that bidder will be awarded the bid.
    - D. If the award cannot be determined by grant provisions, local, county or in-state priority, award will be made to the tie bidder who has received contracts with the City of a smaller total dollar value over the course of the year previous to award.
- (g) Bid protests of contracts awarded under Section 161.02 or Section 161.02A for the purchase of commodities or services in excess of fifty thousand dollars (\$50,000.00) shall be submitted and responded to in accordance with the following requirements:
- (1) *General requirements.*
    - A. All protests shall be in writing, dated, and state in detail each and every ground asserted for the protest. Each protest must cite the law, rule, local ordinance, procedure or bid provision on which the protest is based.
    - B. Failure to file a protest within seven (7) working days shall waive all rights to protest.
    - C. Protests shall be made to the Director of the Office of Management and Budget. The Office of Management and Budget shall notify the protester in writing of the decision regarding the protest.
    - D. A person or entity filing a protest must render along with their written protest payment, a bid protest fee in the form of a certified check, cashier's check, attorney's trust account check or money order made payable to the City of Pittsburgh in the amount of two hundred fifty dollars

(\$250.00). Failure to render timely payment of the bid protest fee shall result in the protest being rejected and of no force and effect. In the event the protesting party ultimately prevails in the protest proceeding before the City, the bid protest fee will be returned to such party.

- (2) *Protest of bid requirements.* Protests based on the bid specifications or requirements must be received by the Director of the Office of Management and Budget no less than seven (7) working days prior to the deadline for submission of bids. Bidders who fail to protest by the deadline shall waive all rights to protest the bid based on specifications or requirements.
- (3) *Protest of non-responsive and non-responsible bidders.*
  - A. If the Director of the Office of Management and Budget determines that the apparent lowest bidder is either nonresponsive or non-responsible, the Office of Management and Budget shall reject the bid. The Office of Management and Budget shall notify the bidder in writing that the bid has been rejected, and state the basis for the rejection.
  - B. The bidder may protest the Director's decision. The protest must be in writing and received by the Office of Management and Budget within seven (7) working days of the issuance of the notice of non-responsiveness and/or non-responsibility.
  - C. If a bid and a subsequent protest are rejected for non-responsibility, the Office of Management and Budget must inform the bidder that it shall have an opportunity for a hearing on the issue of non-responsibility if requested. There is no appeal on the denial of a protest based on a non-responsive bid.
- (4) *Protest of award.* A bidder may protest the City's award of a contract to an apparent lowest responsive and responsible bidder. The protest must be in writing and received by the Office of Management and Budget within seven (7) working days of issuance of a notice of intent to award the contract. The Director of the Office of Management and Budget will review the protest and respond in a timely manner.
- (5) *Finality of decision.* A decision under this Section shall be final and conclusive, unless any person adversely affected by the decision commences an action in court in accordance with state and federal law.
- (6) *Policy.* The Office of Management and Budget shall maintain a policy further delineating the process described above, if deemed appropriate.

**Section 4.** The Pittsburgh Code, Title One, Administrative; Article VII, Procedures; Chapter 161, Contracts; Section 161.02A, Award of Professional Services Agreements, is hereby amended as follows:

(a) *Definitions.* The following definitions are applicable to this Section 161.02A:

- (1) *Competitive process.* Method of competitively selecting contractors/consultants based on qualifications and negotiations rather than a sole competitive price bid.
- (2) *Contract modification.* Any written alteration in the scope of work, compensation, period of performance, or any other provision of any professional services contract that is agreed to by both parties in a written contract amendment.

~~{(3) *Emergency professional services contract.* A professional services contract required where there exists unforeseen circumstances beyond the City's control that either: (a) present a real and identifiable threat to the proper performance of essential functions or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.}~~



- ([4]3) *Open-end professional services contract.* A professional services contract under which the City engages a consultant on an as-needed basis without a pre-determined quantity of services required or guarantee of work.
- ([5]4) *Professional Services Contract.* A contract involving **services provided by consultants or professionals including but not limited to [services of]** members of the medical or legal profession, registered architects, appraisers, auditors, engineers, certified public accountants or other **[personal] professional** services, including provision of such services by non-profit entities, that involve quality as the paramount concern and require a recognized professional and special expertise. For purposes of this Section, this term shall also encompass "personal service contracts."
- ([6]7) *Request for proposals (RFP).* An announcement by the City of a willingness to consider proposals for the performance of a specified project or program. The RFP should contain all relevant criteria the City will consider when evaluating proposals for award.
- ([7]8) ~~[Request for qualifications (RFQ)]~~ **Invitation to Qualify (ITQ).** An announcement by the City seeking qualifications of potential consultants, contractors, and/or vendors to perform a particular scope of work/service for the City.
- ~~[(8) Sole source professional services contract. A contract involving unique professional services that are documented to be available from one (1) source only.]~~
- (b) *Competitive process required.* No professional services contracts will be awarded by the City of Pittsburgh without undertaking ~~[(a) RFQ]~~ **an RFP** or other applicable competitive process as set forth in this Section, unless falling within an exemption category set forth in subsection (c) herein. The Director of the Office of Management and Budget shall issue regulations regarding, inter alia, the applicability of this Section to contract modifications and amendments as well as to the use of pre-qualified contractors.
- (c) *Exemptions.* [The following professional services] **All Professional Services Contracts falling under a category eligible for waiver under §161.02B** are exempt from the requirement of a competitive process for selection contingent upon obtaining a written waiver issued by the ~~[City Solicitor]~~ **Director of the Office of Management and Budget or their designee, confirming** that this exemption duly applies based on inclusion in one **of the categories explicitly delineated in §161.02B.** ~~[or more of the following categories:~~
- ~~(1) Emergency professional service contracts as defined herein.~~
  - ~~(2) Sole source professional service contracts as defined herein.~~
  - ~~(3) Contracts requiring compliance with terms and conditions of a court order, government grant or governmental order.~~
  - ~~(4) Contracts for expert witnesses or consultants associated with anticipated or pending litigation.~~
  - ~~(5) Intergovernmental agreements.]~~
- (d) *Applicable competitive selection process.* Other than as set forth in subsection (e) for open-end professional service contracts **or as set forth in Section 161.02B, if applicable,** the competitive process required for ~~[the applicable]~~ **a Professional Services Contract** shall be based on the proposed budget and/or "not to exceed" total amount of the contract compensation for the entire anticipated contract term. **Where the estimated compensation amount of the professional service contract is three thousand dollars (\$3,000.00) or more, a formal solicitation must be issued. Public advertisement is required on the internet.**
- (1) Where the estimated compensation amount of the professional services contract is less than thirty thousand dollars (\$30,000.00), the applicable department will solicit proposals from at least three (3) qualified providers and/or issue a public advertisement on the internet.**
  - (2) Where the estimated compensation amount of the professional service contract is thirty thousand dollars (\$30,000.00) or more, a formal RFP or RFQ must be issued. Public advertisement of**



**RFP/RFQ is required on the internet.]**

(e) *Competitive process for open-end professional services contracts.* In order to enter into an open-end professional services contract, a separate competitive process will be administered subject to regulations promulgated by the Director of the Office of Management and Budget. This competitive process must conform to the following parameters:

- (1) Consultants will be selected for the opportunity to enter into an open-end professional services contract via a qualifications-based [~~RFQ~~] selection process.
- (2) For open-end professional services contracts where individual work orders are estimated to cost less than or equal to one hundred thousand dollars (\$100,000.00):
  - a. The contract must be limited to a value of no more than seven hundred fifty thousand dollars (\$750,000.00) annually per consultant;
  - b. The contract will be limited to a term of no more than two (2) years with up to two (2), one-year annual extensions;
  - c. If specific professional services are thereafter assigned to a consultant under contract, individual work orders will subsequently be executed as addenda to the contract during its term.
- (3) For open-end professional services contracts where individual work orders are estimated to cost less than or equal to one million dollars (\$1,000,000.00)
  - a. The contract must be limited to a cost of no more than two million five hundred thousand dollars (\$2,500,000.00) annually per consultant;
  - b. The contract must be limited to a term of no more than two (2) years with up to two (2), one-year annual extensions;
  - c. If specific professional services, available under the contract, are thereafter needed by the Department, it will issue a solicitation to a minimum of three (3) of the consultants with which the City has an open-end professional services agreement to provide the required services. The individual work orders issued to the consultant selected by solicitation will subsequently be executed as addenda to the contract during its term.
- (4) Use of open-end professional services contracts is not permitted where individual work orders are estimated to cost greater than one million dollars (\$1,000,000.00).

(f) Per Council's inclusion of a desired professional service in the relevant annual adopted operating or capital budget, department directors and/or the Mayor shall have Council pre-authorization to seek request for proposals ("RFPs") or other formal solicitation type [~~requests for qualifications ("RFQs") or quotes~~], as applicable per this Section 161.02A, for professional services contracts estimated to be valued over three thousand dollars (\$3,000.00). Upon selection of a consultant pursuant to the applicable competitive selection process set forth in this Section 161.02A, for [~~p~~]Professional [~~s~~]Services [~~c~~]Contracts estimated to be valued over three thousand dollars (\$3,000.00). Upon selection of a consultant pursuant to the applicable competitive selection process set forth in this Section 161.02A, the applicable department director and/or the Mayor must thereafter present an authorizing resolution to City Council for final approval to enter into a [~~p~~]Professional [~~s~~]Services [~~c~~]Contracts estimated with said consultant. Such authorizing resolution shall include a "not-to-exceed" compensation amount, financial system account information, and the name of the proposed awardee(s). For open-end [~~p~~]Professional [~~s~~]Services [~~c~~]Contracts, financial system account information will not be required in the authorizing resolution but will be included in addenda to the open-end [~~p~~]Professional [~~s~~]Services [~~c~~]Contracts.

**Section 5.** The Pittsburgh Code of Ordinances Title One, Administrative; Article VII, Procedures is hereby supplemented by adding the following Chapter 161.02B Exemptions from Competitive Process:

**§ 161.02B - EXEMPTIONS FROM COMPETITIVE PROCESS**

**(a) The following contracts are exempt from the requirement of a competitive process for selection, contingent upon obtaining a written waiver issued by the Director of the Office of Management & Budget or his/her designee, confirming that a recognized exemption applies to the contract because it falls within one or more of the following categories:**

**(1) Emergency Contract, defined as: A contract required where there exists unforeseen circumstances beyond the City's control that either: (a) present a real and identifiable threat to the proper performance of essential functions or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.**

**(2) Sole Source contracts, defined as: contracts involving services documented to fall within one of three categories: (i) where competition is precluded due to existence of patent rights, copyrights, or related proprietary claim; ~~(ii) where an item required for the service has design and/or performance features including those that are essential to the using department, including due to compatibility with services or goods currently in use, and no other source satisfies the City's requirements;~~ (ii) where supplier is the only identifiable source of the product or service; or (iii) where distributor or service provider has exclusive franchise or operating agreement w/ supplier or manufacturer of goods otherwise determined to be sole source.**

**(3) Single Source contracts, defined as: ~~contracts for which, after solicitation, only one prospective contractor has expressed interest to enter into a contract with the City.~~ contracts involving services documented to fall within one of the three categories: (i) available from only one source (in which case accompanying waiver request must clearly define the scope in which it is unique); (ii) for which only one prospective contractor is willing to enter into a contract with the City; or (iii) where an item required for the service has design and/or performance features that are essential to the department, including due to compatibility with services or goods currently in use, and no other source satisfies the City's requirements.**

**(4) Contracts requiring compliance with terms and conditions of a court order, grant, collective bargaining agreement or governmental order.**

**(5) Contracts for expert witnesses, consultants, or counsel associated with anticipated, pending, or potential litigation, including cases in which confidentiality could be compromised by public solicitation.**

**(6) Intergovernmental agreements.**

**(7) Contracts for supplies, equipment, or materials at auctions and surplus sales conducted by the**

government of the United States or any agency thereof, any agency of the Commonwealth of Pennsylvania, any municipality or other government agency, or any private party, if the items can be obtained at a competitive price, if determined in advance and in writing that the procurement by auction or surplus sale is in the best interests of the City.

(8) Contracts for subscriptions to periodicals, databases, legal research services, or legal publications.

(9) Services of visiting speakers or performing artists.

(10) Contracts for which a continuation of services is desired by the using department in order to maintain the essential functions of the City as determined in writing by the Office of Management and Budget, including but not limited to contracts for maintenance of existing software or equipment.

(11) Legally required advertisements and postage.

(12) Dues and memberships in trade or professional organizations.

(13) Abstracts of titles for real property and title insurance.

(14) Statutorily-dictated procurement.

(b) The Office of Management & Budget shall maintain a policy further defining the categories listed above and the process by which waivers are to be requested, reviewed and executed if deemed appropriate.