



Legislation Details (With Text)

File #: 2023-1834 **Version:** 2

Type: Ordinance **Status:** Passed Finally

File created: 7/31/2023 **In control:** Committee on Finance and Law

On agenda: 11/1/2023 **Final action:** 11/6/2023

Enactment date: 11/6/2023 **Enactment #:** 30

Effective date: 11/6/2023

Title: Ordinance amending and supplementing the Pittsburgh Code of Ordinances, Title One, Administrative, Article VII, Procedures, Chapter 161, Contracts, Sections 161.02 - Competitive Bidding; Exceptions, 161.02A - Award of Professional Services Agreements and 161.02B - Exemptions From Competitive Process to amend the approval processes for professional services agreements and exemptions from the same.

Sponsors: Reverend Ricky V. Burgess, Anthony Coghill

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
11/6/2023	2	Mayor	Signed by the Mayor	
11/6/2023	2	City Council	Passed Finally	Pass
11/1/2023	2	Standing Committee	AMENDED	Pass
11/1/2023	2	Standing Committee	Affirmatively Recommended as Amended	Pass
10/18/2023	1	Standing Committee	Held in Committee	Pass
9/6/2023	1	Standing Committee	Held in Committee	Pass
8/1/2023	1	City Council	Read and referred	

Ordinance amending and supplementing the Pittsburgh Code of Ordinances, Title One, Administrative, Article VII, Procedures, Chapter 161, Contracts, Sections 161.02 - Competitive Bidding; Exceptions, 161.02A - Award of Professional Services Agreements and 161.02B - Exemptions From Competitive Process to amend the approval processes for professional services agreements and exemptions from the same.

Whereas, in 2009, in response to concerns by members of City Council and the public that professional services contracts concerning city affairs were being awarded to vendors without a competitive process, Council adopted Ordinance Number 10 of 2009, which established regulations on awards of professional services contracts, **and**;

Whereas, Ordinance 10 of 2009 required, among other things, that any request to exempt the award of a professional services agreement or contract without a competitive bidding process, to be regulated by the Department of Finance, required the written approval of the City Solicitor; **and**,

Whereas, Ordinance Number 24 of 2018, reflecting the 2014 reorganization of the Department of Finance and the Office of Management and Budget which separated, into two distinct positions, the Director of Finance and

the Director, Office of Management and Budget (“OMB”), transferred regulatory authority for competitive bidding processes to OMB from Finance; **and,**

Whereas, Pittsburgh City Council, by way of Ordinance Number 6 of 2020, transferred exemption authority, vested by Ordinance Number 10 of 2009 in the City Solicitor, to the Director, Office of Management and Budget, **and;**

Whereas, Ordinance Number 2 of 2022 and Ordinance Number 34 of 2022, approved by City Council, restructured the Office of Management and Budget, transforming it into the lead administrative agency of City government, **and;**

Whereas, Council now finds it appropriate, given the restructuring of these city Departments over the past decade, to again relocate approval authority for exemptions from the competitive bidding process, to eliminate any perceived appearance of impropriety.

THEREFORE BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF PITTSBURGH HEREBY ENACTS AS FOLLOWS:

The Pittsburgh Code of Ordinances, Title One: Administrative, Article VII: Procedures, Chapter 161: Contracts, Sections 161.02 - Competitive Bidding; Exceptions, 161.02A - Award of Professional Services Agreements and 161.02B - Exemptions From Competitive Process are hereby amended and supplemented as follows:

Section 1. The Pittsburgh Code of Ordinances, Title One: Administrative, Article VII: Procedures, Chapter 161: Contracts, is hereby amended by amending 161.02A(e), renumbering 161.02A(f) to 161.02A(g) and adding a new 161.02A(f), and amending 161.02B(a), 161.02B(a)(4), 161.02B(a)(5), and 161.02B(b) all relating to open-end professional services contracts.

§ 161.02A AWARD OF PROFESSIONAL SERVICES AGREEMENTS.

- (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) *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.
 - (4) *Professional services contract.* A contract involving services provided by consultants or professionals including but not limited to members of the medical or legal profession, registered architects, appraisers, auditors, engineers, certified public accountants or other 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."

- (5) *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.
- (6) *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.
- (b) *Competitive process required.* No professional services contracts will be awarded by the City of Pittsburgh without undertaking 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.* All professional services contracts falling under a category eligible for waiver under Section 161.02B 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 and Budget or their designee, confirming that this exemption duly applies based on inclusion in one (1) of the categories explicitly delineated in Section 161.02B.
- (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 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 five thousand dollars (\$5,000.00) or more, a formal solicitation must be issued. Public advertisement 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 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)~~] **three (3)** years with [~~up to two (2), one-year annual extensions~~] **no 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)~~] **five hundred thousand dollars (\$500,000)**:
 - a. The contract must be limited to a cost of no more than [~~two million five hundred thousand~~

dollars (~~\$2,500,000.00~~) **one million five hundred thousand (\$1,500,000)** 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~~] **three (3) years with no 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)~~] **five hundred thousand dollars (\$500,000)**.

(f) Reporting of open-end professional services contracts. Beginning in the year following adoption of this ordinance the Office of Management and Budget shall provide to Council quarterly reporting for all open-end professional services contracts. Quarterly reports shall include the following:

- (1) Financial System Designation Identifier**
- (2) Name of the vendor.**
- (3) Contract number and years remaining under the current term.**
- (4) Number of work orders to each vendor including the amount of each work order.**
- (5) A description of the deliverable.**

(g[~~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 as applicable per this Section 161.02A, for professional services contracts estimated to be valued over five thousand dollars (\$5,000.00). 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 Professional Services 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 Professional Services Contracts, financial system account information will not be required in the authorizing resolution but will be included in addenda to the open-end Professional Services Contracts.

(Ord. No. 10-2009, § 1, eff. 5-15-09; Ord. No. 8-2017, § 1, eff. 2-21-17; Ord. No. 24-2018, § 1, eff. 7-19-18; Ord. No. 6-2020, § 4, eff. 3-13-20; Ord. No. 10-2020, §§ 2, 4, eff. 3-31-20)

Section 2: The Pittsburgh Code of Ordinances, Title One: Administrative, Article VII: Procedures, Chapter 161: Contracts, § 161.02B(a), Exemptions From Competitive Process, is hereby amended and supplemented by substituting the City Controller for the Director of the Office of Management and Budget and clarifying exemptions requiring the concurrent approval of the City Controller and City

Solicitor and § 161.02B(b) clarifying the review process to make it consistent with § 161.02B(a).

§ 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 determined by the **Director of the Office of Management and Budget and verified by the City Solicitor**~~[or his/her their designee]~~, confirming that a recognized exemption applies to the contract because it falls within one (1) 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 (1) of three (3) categories: (i) where competition is precluded due to existence of patent rights, copyrights, or related proprietary claim; (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 with supplier or manufacturer of goods otherwise determined to be sole source.
 - (3) Single source contracts, defined as: Contracts involving services documented to fall within one (1) of the three (3) categories: (i) available from only one (1) source (in which case accompanying waiver request must clearly define the scope in which it is unique); (ii) for which only one (1) 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. **Notwithstanding any contrary City policy or the Code of Ordinances, an exemption under this subsection shall require the written approval of the [City Controller and the]City Solicitor.**
 - (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. **Notwithstanding any contrary City policy or the Code of Ordinances, an exemption under this subsection shall require the written approval of the [City Controller and the]City Solicitor.**
 - (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.
 - (15) Non-professional service agreements with performers, instructors, artists, referees, and persons with specialized skills in connection with recreational, instructional, and special events services needed by the Department of Parks and Recreation and/or the Department of Public Safety, Office of Special Events that are valued at ten thousand dollars (\$10,000.00) or less per agreement.
- (b) The Office of Management and Budget shall maintain a policy further defining the categories listed above and the process by which waivers are to be requested, **and a copy of this policy is to be provided to the City Controller, and Council via the City Clerk.** ~~[reviewed for submission to the Controller for approval, and executed if deemed appropriate.]~~

(Ord. No. 6-2020, § 5, eff. 3-13-20; Ord. No. 22-2021, § 1, eff. 7-29-21)