

ORDINANCE NO. 1342-12

AN ORDINANCE RELATING TO PUBLIC CONTRACTING; ADDING NEW SECTIONS FOR A QUALIFICATIONS BASED SELECTION PROCESS FOR CERTAIN PROFESSIONALS; AND ADDING NEW SECTIONS TO TMC CHAPTER 1.21.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. A new section, TMC 1-21-180, is added to the Tualatin Municipal Code to read as follows:

TMC 1-21-180 Definitions. As used in TMC 1-21-180 through 1-21-260, the following definitions apply:

- (1) "Estimated fee" means the City's reasonably projected fee to be paid for a QBS Consultant's services under the anticipated contract, excluding all anticipated reimbursable or other non-professional fee expenses. The estimated fee is used solely to determine the applicable contract solicitation method and is distinct from the total amount payable under the contract.
- (2) "Price agreement" refers to an agreement that is related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions and possibly at a set price with:
 - (a) No guarantee of a minimum or maximum purchase; or
 - (b) An initial order or minimum purchase, combined with a continuing QBS Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the City does not guarantee a minimum or maximum additional purchase.
- (3) "Project" means all components of a City's planned undertaking that gives rise to the need for a QBS Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
- (4) "QBS" means Qualification Based Selection as required by ORS 279C.105.
- (5) "QBS Consultant" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A QBS Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing.

(6) "QBS Services" refers to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services.

(7) "Related services" means personal services, other than architectural, engineering, photogrammetric, mapping, Transportation Planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services or land-use planning services.

(8) "Transportation Planning Services" include Project-specific transportation planning involved in categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual Project which will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.

Section 2. A new section, TMC 1-21-190 is added to the Tualatin Municipal Code to read as follows:

Applicable Selection Procedures (1) When selecting the most qualified QBS Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the City shall follow its ordinary procurement processes if the Estimated Fee will be \$100,000 or less or the City may choose to follow the QBS selection process. If a QBS selection process is used or required, the City shall not solicit or use pricing policies and pricing proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a QBS Consultant's compensation until after the City has selected the most qualified QBS Consultant in accordance with the applicable selection procedure.

(2) When selecting QBS Consultants to perform Related Services, the City shall use its standard selection processes or a QBS selection process, as determined in its sole discretion.

(3) The City may use electronic methods to screen and select a QBS Consultant in accordance with the procedures set forth in this ordinance.

(4) For purposes of this ordinance, a "mixed" contract is one requiring the QBS Consultant to perform QBS Services and other Services or other related goods under the contract. The City's classification of a procurement that will involve a "mixed" contract will be determined by the predominant purpose of the contract.

(5) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by the City for QBS or Related Services:

(a) "Competitive proposal", for purposes of ORS 279C.107 means proposals submitted according to the QBS selection process.

(b) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the City is conducting discussions or negotiations with proposers who submit proposals that the City has determined to be closely competitive or to have a reasonable chance of being selected for award, the City may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, City may open proposals in such a way as to avoid disclosure of the contents until after the City executes a contract with the selected QBS Consultant. If the City determines that it is in the best interest of the City to do so, the City may make proposals available for public inspection following the City's issuance of a notice of intent to award a contract to a QBS Consultant.

(c) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(6) As required by ORS 279C.307, to ensure the objectivity and independence of providers of certain personal services that are procured under ORS chapter 279C, the City may not:

(a) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract from a contractor or an affiliate of a Contractor who is a party to the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services; or

(b) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract through the public contract that is subject to

administration, management, monitoring, inspection, evaluation or oversight by means of the Services.

(7) The requirements of ORS 279C.307 and subsection (6) apply in the following circumstances, except as provided in (8) of this section:

(a) The City requires the procurement of personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract or performance under a public contract that is subject to ORS chapter 279C.

(b) The procurements of personal services subject to the restrictions of ORS 279C.307 includes but are not limited to, the following:

(i) Procurements for QBS Services, which involve overseeing or monitoring the performance of a construction contractor under a Public Contract for construction services subject to ORS chapter 279C;

(ii) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a contractor providing QBS Services or the performance of a construction contractor under a public contract for construction services subject to ORS chapter 279C;

(iii) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing QBS Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a project;

(iv) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction contractor under a public contract for construction services subject to ORS chapter 279C; and

(v) Procurements for other related services or personal services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the public contracts.

(8) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

- (a) To the City's procurement of both design services and construction services through a single "Design-Build" procurement.
- (b) To the City's procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" procurement.

Section 3. A new section, TMC 1-21-200, is added to the Tualatin Municipal Code to read as follows:

Selection Procedures. (1) The City may enter into a contract directly with a QBS Consultant without following QBS selection procedures if:

- (a) The City finds that an emergency exists; or
- (b) The Estimated Fee to be paid under the contract does not exceed \$100,000; or
- (c) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier contract with the same QBS Consultant and are rendered for the same project as the QBS Services rendered under the earlier contract; and
 - (i) The estimated fee to be made under the contract does not exceed \$250,000; and
 - (ii) The City used the formal selection procedure at the time the QBS Consultant was selected for the earlier contract.
- (d) When a project is being continued and the estimated fee is expected to exceed \$250,000, the QBS Services to be performed under the Contract must meet the following requirements:
 - (i) The services consist of or are related to QBS Services that have been substantially described, planned or otherwise previously studied under an earlier contract with the same QBS Consultant and are rendered for the same project as the QBS Services rendered under the earlier Contract;
 - (ii) The City used either the formal selection procedure or the formal selection procedure applicable to selection of the QBS Consultant at the time of original selection for the earlier contract; and

(iii) The City makes written findings that entering into a contract with the QBS Consultant, whether as an amendment to an existing contract or to a separate contract for the additional scope of services, will:

(iv) Promote efficient use of public funds and resources and result in substantial cost savings to the City; and,

(v) Protect the integrity of the public contracting process and the competitive nature of the procurement by not encouraging favoritism or substantially diminishing competition in the award of the contract.

(2) The City may select QBS Consultants for contracts under (1) of this section from any QBS Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the City reasonably can identify under the circumstances.

(3) The City shall direct negotiations with QBS Consultants selected under this section toward obtaining written agreement on:

(a) The QBS Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the QBS Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the City as determined solely by the City, taking into account the value, scope, complexity and nature of the QBS Services; and

(c) Any other provisions the City believes to be in the City's best interest to negotiate.

Section 4. A new section, TMC 1-21-210, is added to the Tualatin Municipal Code to read as follows:

Formal Selection Procedure (1) The City shall use the formal selection procedure described in this section to select QBS Consultants if the Estimated Fee will exceed \$100,000. The formal selection procedure may be used when the Estimated Fee will not exceed \$100,000 at the City's discretion.

(2) When using the formal selection procedure the City shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.

(a) Except as provided in (b) of this section (electronic advertisements), the City shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

(i) The City shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.

(ii) The City shall include a brief description of the following items in the advertisement:

(A) The Project;

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the City seeks;

(C) How and where QBS Consultant-applicants may obtain a copy of the RFQ or RFP; and

(D) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in (2) (a) of this section, the City shall publish each RFP and RFQ by one or more of electronic methods approved by the City.

(3) RFQ requirements. The City may use the RFQ procedure to evaluate potential QBS Consultants and establish a short list of qualified QBS Consultants to whom the City may issue an RFP for some or all of the QBS Services described in the RFQ.

(a) The City shall include the following, at a minimum, in each RFQ:

(i) A brief description of the Project for which the City is seeking QBS Consultants;

(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land

Surveying Services or Related Services the City seeks for the Project;

(iii) Conditions or limitations, if any, that may constrain or prohibit the selected QBS Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(iv) The deadline for submitting a response to the RFQ;

(v) A description of required QBS Consultant qualifications for the QBS Services the City seeks;

(vi) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

(vii) A statement whether or not the City will hold a pre-qualification meeting for all interested QBS Consultants, and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(viii) A Statement that QBS Consultant's responding to the RFQ do so solely at their expense and that the City is not responsible for any QBS expenses associated with the RFQ.

(b) The City may include a request for any or all of the following in each RFQ:

(i) A statement describing QBS Consultant's general qualifications and related performance information;

(ii) A description of QBS Consultants' specific qualifications to perform the QBS services described in the RFQ including QBS Consultants' committed resources and recent, current and projected workloads;

(iii) A list of similar QBS services and references concerning past performance, and a copy of all records, if any, of QBS Consultants' performance under contracts with any other City;

(iv) The number of QBS Consultants' experienced staff available to perform the QBS services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(v) QBS Consultants' approaches to QBS services described in the RFQ and design philosophy, if applicable;

(vi) QBS Consultants' geographic proximity to and familiarity with the physical location of the Project;

(vii) QBS Consultants' ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) If the City is selecting a QBS Consultant to provide related services, QBS Consultant's pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;

(ix) QBS Consultant's ability to assist the City in complying with the solar energy technology requirements of ORS 279C.527; and

(x) Any other information the City deems reasonably necessary to evaluate QBS Consultants' qualifications.

(4) The City may use any reasonable screening or evaluation method to establish a short list of qualified QBS Consultants.

(5) The City shall use the following procedures when issuing an RFP for a QBS Consultant:

(a) When using the formal selection procedure the City shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(i) General background information, including a description of the Project and the specific QBS services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific QBS Services sought will be performed.

(ii) The RFP evaluation process and the criteria which will be used to select the most qualified proposer, including the weights, points or other classifications applicable to each criterion. If the City does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(A) Proposers' availability and capability to perform the Services described in the RFP;

- (B) Experience of Proposers' key staff persons on comparable projects;
- (C) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the QBS Services;
- (D) The recent, current and projected workloads of the staff and resources;
- (E) Proposers' demonstrated ability to complete successfully similar QBS Services on time and within budget, including whether or not there is a record of satisfactory performance;
- (G) References and recommendations from past clients;
- (H) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, and meeting financial obligations;
- (I) Status and quality of any required license or certification;
- (J) Proposers' knowledge and understanding of the Project and Services and proposed solutions to any perceived design and constructability issues;
- (K) Results from interviews, if conducted;
- (L) Design philosophy, if applicable;
- (M) If the City is selecting a QBS Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and
- (N) Any other criteria that the City seems relevant to the project.
- (O) Conditions or limitations, if any, that may constrain or prohibit the selected QBS Consultant's ability to provide additional services related to the project, including but not limited to construction services;

- (P) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;
- (Q) The date and time proposals are due, and the delivery location for proposals;
- (R) Reservation of the right to seek clarifications of each proposal;
- (S) Reservation of the right to negotiate a final contract that is in the best interest of the City;
- (T) Reservation of the right to reject any or all proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the City;
- (U) A Statement that proposers responding to the RFP do so solely at their expense, and City is not responsible for any proposer expenses associated with the RFP;
- (V) A statement directing proposers to the protest procedures set forth in the solicitation document.
- (W) Special contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;
- (X) A statement whether or not the City will hold a pre-proposal meeting for all interested QBS Consultants to discuss the project and the QBS Services and if a pre-proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;
- (Y) A request for any information the City deems reasonably necessary to permit the City to evaluate, rank and select the most qualified proposer to perform the QBS Services described in the RFP; and
- (Z) If the City does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the City

will begin negotiating a Contract with the highest ranked proposer.

(AA) If the City and proposer are unable for any reason to reach agreement on a contract within a reasonable amount of time, as determined by the City, the City shall, formally terminate negotiations with the highest ranked proposer and begin negotiations with the second ranked proposer. The City may repeat this process, if necessary, with the third ranked proposer and subsequent proposers, until negotiations result in a contract. If negotiations are unsuccessful, the City may end the particular formal solicitation and begin a new solicitation for the same QBS Services.

Section 5. A new section, TMC 1-21-220 is added to the Tualatin Municipal Code to read as follows:

Ties Among Proposers. If the City is selecting a QBS Consultant on the basis of qualifications alone and determines after the ranking of proposers that two or more proposers are equally qualified, the City may select a candidate through any process that the City believes will result in the best value for the City taking into account the scope, complexity and nature of QBS Services. However, the tie breaking process cannot be based on the QBS Consultant's pricing policies, pricing proposals or other pricing information

Section 6. A new section, TMC 1-21-230 is added to the Tualatin Municipal Code to read as follows:

Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals. The City may cancel, delay or suspend a solicitation, RFQ or other preliminary procurement document, or reject all proposals, responses to RFQs, responses to other preliminary procurement documents, or any combination of the foregoing, if the City believes it is in the public interest to do so. The City is not liable to any proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection.

Section 7. A new section, TMC 1-21-240 is added to the Tualatin Municipal Code to read as follows:

Two-Tiered Selection Procedure-State Agency (1) If the City requires QBS Services for a public improvement owned and maintained by the City, and a state agency will serve as the lead contracting agency and will enter into contracts with QBS Consultants for that public Improvement, the City shall utilize the two-tiered selection process described below to obtain these contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

(2) Tier One. The state contracting agency shall, when feasible, identify no fewer than the three (3) most qualified proposers responding to an RFP pursuant to its own rules, or, if permitted by the state, by the City's rules, from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors and shall notify the City of the Consultants selected.

(3) Tier Two. In accordance with the qualifications based selection requirements of ORS 279C.110, the City shall either:

(a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor from the state list of proposers to perform the QBS Services for the City's public improvement from among the three candidates chosen by the state; or

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the QBS Services for the City's public improvement through an alternative process adopted by the City, consistent with the provisions of the applicable RFP, if any, and these QBS rules.

(4) The City shall then begin contract negotiations with the selected QBS Consultant in accordance with these rules.

(5) Nothing in these rules should be construed to deny or limit the City's ability to enter into a contract directly with QBS consultants pursuant to ORS 279C.125(4), through a selection process established by the City .

Section 8. A new section, TMC 1-21-250, is added to the Tualatin Municipal Code to read as follows:

Price Agreements. (1) The City may establish price QBS Services, when the City cannot determine the precise quantities of those services which the City will require for a specified time period.

(2) Solicitation materials and the terms and conditions for a price agreement for QBS Services must:

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or proposer to decide whether to submit a bid or proposal;

(b) Specify whether the City intends to award a price agreement to one QBS Consultant or to multiple QBS Consultants. If the City will award a price agreement to more than one QBS Consultant, the solicitation document and price agreement shall describe the criteria and procedures

the City will use to select a QBS Consultant for each individual work order or task order.

(c) Specify the maximum term for assigning QBS Services under the price agreement.

(3) All QBS services assigned under a price agreement require a written work order or task order issued by the City. Any work orders or task orders assigned under a price agreement must include, at a minimum, the following:

(a) A clearly defined statement of work and schedule for any deliverables;

(b) A maximum, not-to-exceed price or fixed price amount for the QBS Consultant specified and authorized under the work order or task order, and

(c) Language that incorporates all applicable terms and conditions of the price agreement into the task order.

Section 9. A new section, TMC 1-21-260, is added to the Tualatin Municipal Code to read as follows:

Expired or Terminated Contracts; Reinstatement. (1) If a City enters into a contract for QBS Services and that contract subsequently expires or is terminated, the City may proceed as follows, subject to the requirements of subsection (2) of this rule:

(a) Expired Contracts. If the contract has expired as the result of project delay caused by the City or caused by any other occurrence outside the reasonable control of the City or the QBS Consultant, and if no more than one year has passed since the contract expiration date, the City may amend the contract to extend the contract expiration date, revise the description of the QBS Services required to reflect any material alteration of the project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the City and the QBS Consultant shall continue performance under the contract as amended; or

(b) Terminated Contracts. If the City or both parties to the contract have terminated the contract for any reason and if no more than one year has passed since the contract termination date, then the City may enter into a new contract with the same QBS Consultant to perform the uncompleted QBS Services, or to perform any remaining QBS services not completed under the contract as adjusted to reflect a material alteration of the project.

(2) The City may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the QBS Consultant will:

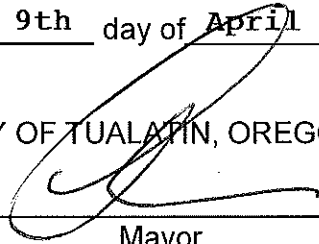
(a) Promote efficient use of public funds and resources and result in substantial cost savings to the City;

(b) Protect the integrity of the public contracting process and the competitive nature of the procurement process by not encouraging favoritism or substantially diminishing competition in the award of contracts.; and

(c) Result in a contract that is still within the scope of the final form of the original procurement document.

INTRODUCED AND ADOPTED this 9th day of April, 2012.

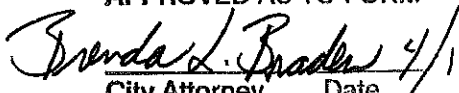
CITY OF TUALATIN, OREGON

BY  _____
Mayor

ATTEST:

BY  _____
City Recorder

APPROVED AS TO FORM

 4/13/2012
City Attorney Date