

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 061068

Repealing Committee Substitute for Resolution No. 040170 and amending Chapter 2, Code of Ordinances, by repealing Section 2-1585, Design-build contract, and enacting a new section in lieu thereof entitled "Alternative Construction Delivery Methods."

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 2, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 2-1585, Design-build contract, and enacting in lieu thereof a new section of like number and subject matter, to read as follows:

Sec. 2-1585. Alternative Construction Delivery Methods

(a) Except as otherwise provided in this section, all city construction contracts shall be awarded to the lowest and best bidder or best proposer after due opportunity for competition. The city manager is authorized to enter into any and all construction contracts on behalf of the city.

(b) The city manager may award a contract without soliciting bids or requesting proposals when it is in the best interest of the city, subject to the provisions of section 2-1595 and subsections (f) and (g).

(c) In lieu of awarding a construction contract through a traditional design-bid-build process, the city manager may utilize any of the following alternative construction delivery methods:

- (1) Design-Build;
- (2) Competitive Sealed Proposals;
- (3) Cooperative Agreements with a private or public entity;
- (4) Construction Management Services;
- (5) Any other alternative procurement method as specified in rules and regulations adopted by the city manager.

(d) All contracts entered into pursuant to this section shall comply with all applicable Federal and State laws.

(e) All ordinances approving a contract awarded without soliciting bids or proposals, shall include findings by the city council explaining the factors justifying the award. Contracts entered into by the city manager without council approval pursuant to

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subsection (b), shall require a determination by the city manager stating the factors that justified awarding a contract without soliciting bids or proposals.

(f) In selecting an alternative construction delivery method and awarding a contract pursuant to subsection (b), the city manager shall consider the following factors:

- (1) the needs of the city;
- (2) time requirements for the project and potential time saving strategies;
- (3) the complexity of the project;
- (4) estimated project costs;
- (5) cost savings to the city;
- (6) private investment and financial contributions that could be leveraged to complete the project;
- (7) the likelihood that the use of an alternative procurement method will diminish competition for city contracts; and
- (8) any other factor the city manager deems to be in the city's best interest.

(g) Except as otherwise provided by ordinance, in determining to whom to award a contract, the city manager may consider the factors listed below. If the contract is awarded by a party other than the city pursuant to a cooperative agreement between that party and the city, the party awarding the contract shall consider, at a minimum, the same factors listed in this subsection.

- (1) the cost submitted or proposed by the contractor;
- (2) the reputation of the contractor;
- (3) the quality of the contractor's goods or services;
- (4) previous relevant experience and technical capabilities of the contractor;
- (5) the extent to which the contractor's goods or services meet the city's needs;
- (6) the contractor's past relationship with the city;
- (7) the contractor's ability to comply with the procedures and requirements set forth in Chapter 38, Code of Ordinances;

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- (8) any private investment or contribution, financial or otherwise, proposed by the contractor to complete the project; and
- (9) any other relevant factor specifically listed in the solicitation of bids or request for proposals.

(h) *Design-Build Award and Contract.* The city manager may use any basis for awarding a design-build contract. The city manager may choose the specified price structure or combinations of price structures that is in the city's best interest based on the specific requirements for each individual project. The city manager may utilize the following design-build procurement methods:

- (1) *Best Value.* Award to the responsible design-build firm whose proposal is evaluated as providing the best value to the city, based on any factors and method and formula the city manager determines appropriate and includes in a request for proposals (RFP).
- (2) *Qualification-Based selection.* Award to the design-build firm selected through a request for qualifications (RFQ) process. The design-builder is selected on qualifications alone. The city manager then negotiates a contract with the selected firm.
- (3) *Two-Phase.* A Two-Phase process consists of the use of an RFQ to short-list qualified design-build firms, and the use of an RFP to evaluate qualitative technical proposals and price proposals to determine the lowest adjusted score and to select and award the contract.
- (4) *Low-Bid.* A Low-Bid process is a 2-step process that results in an award to the responsible design-build firm offering the proposal that is the lowest priced and that is also technically responsive. If the project solicitation includes a mandatory minimum technical level, no proposal shall be considered responsive unless it meets that level.
- (5) *Fixed Price.* In lieu of requiring qualitative technical proposals and price proposals, the city manager may establish a fixed dollar budget for the project in the RFP, and require submission of only qualitative technical proposals, price being fixed for all proposers with the award made to the proposal receiving the highest qualitative score.
- (6) Other method established by rules or regulations.

(i) The city manager may promulgate rules and regulations to implement the utilization of alternative construction delivery methods.

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Section 2. That Committee Substitute for Resolution No. 040170, passed by the City Council on February 19, 2004, directing the City Manager to utilize the City's Design-Build Bidding Ordinance, Section 2-1585, Code of Ordinances, on up to eight City projects assigned to the City Manager's Capital Improvements Management Office, is hereby repealed in its entirety.

Approved as to form and legality:

Nelson V. Munoz
Assistant City Attorney