

**AN ORDINANCE AMENDING SECTIONS 140.010 AND 140.030 OF THE CODE OF ORDINANCES
REGARDING THE PURCHASING POLICY
FOR THE CITY OF CREVE COEUR**

WHEREAS, the City Council of the City of Creve Coeur, Missouri has determined that it is appropriate to revise the provisions of the Code of Ordinances regarding the City's purchasing policy to facilitate the use of design-build contracts; and

WHEREAS, a design-build process will offer the City another option which may result in a more effective manner of constructing certain public improvements;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Creve Coeur, Missouri, as follows:

SECTION 1. Section 140.010.B of the Code of Ordinances is amended by adding the following definitions:

DESIGN-BUILD

A project delivery method subject to a multiple stage qualifications-based selection for which the design and the construction services are furnished under one contract.

DESIGN-BUILD CONTRACT

A contract which is subject to the multiple stage qualifications-based selection process between the City and a design-builder to furnish the architectural, engineering, and related design services and the labor, materials, supplies, equipment, and other construction services required for a design-build project.

DESIGN-BUILD PROJECT

The design, construction, alteration, addition, remodeling, or improvement of any buildings or facilities under contract with the City. Such design-build projects include, but are not limited to: roads and streets, bridges, utilities, storm drainage facilities, public buildings, recreational facilities, and public site improvements.

DESIGN-BUILDER

Any individual, firm, partnership, corporation, association, joint venture, or other legal entity that offers to provide or provides design services and general contracting services through a design-build contract in which services within the scope of the practice of professional architecture or engineering are performed respectively by a licensed architect or licensed engineer and in which services within the scope of general contracting are performed by a general contractor or other legal entity that furnishes architecture or engineering services and construction services either directly or through subcontracts or joint ventures.

STIPEND

An amount paid to the unsuccessful but responsive, short-listed design-builders to defray the cost of participating in the second phase of the selection process described in this Policy, when applicable.

SECTION 2. Section 140.030.B.8 is hereby amended to add item h. Design-Build Projects as an additional "Exempt Purchase".

SECTION 3. Section 140.030 is hereby amended by adding a new subsection J. Design-Build Projects, as follows:

J. Design-build projects.

Approval of the City Council and Request for Qualifications.

If City staff determines that a project would benefit from a design-build process, City staff shall obtain approval of the City Council in order to use the design-build process for that project. City staff shall provide the reasons why design-build would be advantageous for the project and any other information requested by the Council. Council approval is required before the project is advertised as a design-build project even if the project was previously approved as part of the budget. If the City Council approves a project for a design-build process, then one of the following methods (Option #1 or Option #2) as approved by the City Council shall be utilized by City staff for the design-build process. City staff will provide a recommendation for City Council's consideration for either Option #1 or Option #2.

Option #1 Description – Generally for projects which are large scale civil works projects with multiple work scopes and likely requiring many professional design consultants and subconsultants. Such projects generally will have complex construction work scopes requiring a high level of planning, higher level of construction coordination, numerous subcontractors and generally longer construction durations. Noncivil works projects such as complex buildings and large site improvement projects shall also generally fall into this option.

Option #2 Description – Generally for projects which are smaller scale civil works projects with limited work scopes and likely requiring just one or a few design consultant(s). Such projects generally will have a well-defined work scope, a limited number of subcontractors needed during construction and generally shorter construction durations. Noncivil works projects such as simple buildings, smaller site improvement projects, or prefabricated or similar type of structures shall also generally fall into this option.

Option #1 Process - Step One – Request for Qualifications

A. The City shall publish a Requests for Qualifications (RFQ) in the same manner as Section 140.030 B. Purchasing Procedures. The RFQ shall set forth a general description of the project requiring design-build services and define the time frame and procedures for interested qualified firms to apply for consideration. In addition, the RFQ shall set forth a description of the areas of qualification required for performance of the work, such as experience, management resources, project

references, and financial capacity.

B. The City Administrator shall designate city representatives, and also consultants if appropriate, to serve as a Technical Review Committee. The Technical Review Committee shall determine the relative ability of each firm to perform the services required for each project. Determination of ability shall be based upon experience with comparable projects; financial and bonding capacity, managerial resources; the abilities of the professional personnel; past performance for the City; capacity to meet time and budget requirements; knowledge of local or regional conditions; recent, current, and project workload of the firms; and the ability of the design and construction teams to complete the work in a timely and satisfactory manner.

C. The Technical Review Committee shall select not more than five firms and not less than two firms deemed to be the most highly qualified to perform the required services after considering the factors set forth in subsection B above. In the event that only one firm submits a response, the Committee shall determine if the firm is qualified and, if so, the City may proceed to direct negotiation with that firm, but otherwise the City shall republish the RFQ or select a different method for completion of the project.

D. The Request for Proposals issued in accordance with Option 1 Step Two below shall be provided to those firms selected by the Technical Review Committee.

E. No selected firm shall replace a contractor, subcontractor, design consultant or subconsultant identified in their RFQ response without the written approval of the City.

F. A list of the firms selected to submit a proposal will be subject to disclosure when the list is finalized. The analysis of the qualifications, or summary of results, will remain confidential contract negotiation documents until the contract has been negotiated and executed.

Option #1 Process - Step Two – Request for Proposals (RFPs) from firms selected by the Technical Review Committee.

A. A Request for Proposals package shall be prepared by the City. The City may engage independent consultants to assist with the preparation of such documents; provided, however, that no independent consultants shall be affiliated with those firms selected by the Technical Review Committee. The purpose of the RFP package is to furnish sufficient performance criteria for firms to prepare qualitative proposals and price proposals, as well as instructions to bidders, bid proposal forms, contract provisions, general and special conditions, and the basis for evaluation of submittals.

B. The RFP may include, without limitation, site survey; material quality standards; programmatic space needs; conceptual design criteria; design and construction schedules; site development requirements; stipulation of responsibilities for permits and connections to utilities, storm water facilities and roads; stipulation of responsibility for meeting environmental regulations; soil borings and geo-technical information; a statement of required compliance with statutory requirements, codes and general technical specifications; budget limitations; and any other design or performance criteria relevant to the project.

- C. The selected firms shall respond to the RFP as follows:
- a. Each firm shall develop a detailed project design and program for construction of the project in compliance with the RFP. All such documents and submissions shall identify the RFP and be clearly marked "Project Design and Construction".
 - b. In a separately sealed envelope, each firm shall place the cost proposal which shall provide a firm, fixed cost of design and construction and the bid security, if such is required. This envelope shall identify the RFP and be clearly marked "Cost Proposal".

Option #1 Process - Step Three – Selection.

- A. Upon receipt of the Proposals in response to the RFP from the qualified firms, the Technical Review Committee shall first review the Project Design and Construction submittals and shall rank them according to responsiveness to the RFP and shall assign each firm a score corresponding with the firm's ranking. Each firm shall be given a score from 1 to 10, with 10 being the highest score. This score shall account for 60% of the total point score for each firm.
- B. After completion of scoring pursuant to subsection A, upon the date and time set in the Request for Proposals, the cost proposals shall be publicly opened and read aloud. The firms shall be ranked from lowest cost to highest cost with one (1) point being assigned to the highest cost proposal and 10 points being allocated based on cost differential among the other proposals. This score shall account for 40% of the total point score for each firm.
- C. The maximum possible total point score is 20 points.
- D. The responsive design-builder with the highest score shall be recommended to the City Council.
- E. In finally awarding a contract, the City Council Resolution shall set forth the reason(s) supporting its decision if the Council does not select the design-builder with the highest score.
- F. The City may at any time prior to entering into contract reject all proposals and either solicit new proposals using different design criteria, budget constraints or qualifications or choose a different method for completion of the project.
- G. The analysis of the proposals, or summary of results, will remain confidential until the contract has been negotiated and executed.

Option #2 Process – Step One – Request for Qualifications (RFQ) and Request for Proposals (RFP):

- A. The City shall publish RFQ and RFP at the same time, in the same manner as Section 140.030 B. Purchasing Procedures. The RFQ shall set forth a general description of the project requiring design-build services and define the time frame and procedures for interested qualified firms to apply for consideration. In addition, the RFQ shall set forth a description of the areas of qualification required for performance of the work, such as experience, management resources, project references, and

financial capacity.

The RFP shall be prepared by the City. The City may engage independent consultants to assist with the preparation of the RFP.

The purpose of the RFP package is to furnish sufficient performance criteria for firms to prepare qualitative proposals and price proposals, as well as instructions to bidders, bid proposal forms, contract provisions, general and special conditions, and the basis for evaluation of submittals.

The RFP may include, without limitation, site survey; material quality standards; programmatic space needs; conceptual design criteria; design and construction schedules; site development requirements; stipulation of responsibilities for permits and connections to utilities, storm water facilities and roads; stipulation of responsibility for meeting environmental regulations; soil borings and geo-technical information; a statement of required compliance with statutory requirements, codes and general technical specifications; budget limitations; ability to meet the schedule; and any other design or performance criteria relevant to the project.

B. The City Administrator shall designate city representatives, and also consultants, if appropriate, to serve as a Technical Review Committee. The Technical Review Committee shall determine the relative ability of each firm to perform the services required for each project. Determination of ability shall be based upon experience with comparable projects; financial and bonding capacity, managerial resources; the abilities of the professional personnel; past performance for the City; capacity to meet time and budget requirements; knowledge of local or regional conditions; recent, current, and project workload of the firms; and the ability of the design and construction teams to complete the work in a timely and satisfactory manner.

C. The Technical Review Committee shall select not more than five firms and not less than two firms deemed to be the most highly qualified to perform the required services after considering the factors set forth above. In the event that only one firm submits a response, the Committee shall determine if the firm is qualified and, if so, the City may proceed to direct negotiation with that firm, but otherwise the City may republish the RFQ/RFP or select a different method for completion of the project.

D. All Firms shall respond to the RFP at the same time they respond to the RFQ portion as follows:

a. In a separate envelope, each firm shall respond to the RFQ.

b. In a separately sealed envelope, each firm shall develop a detailed project design and program based on the RFP. All such documents and submissions shall identify the RFP and be clearly marked "Project Design and Construction".

c. In a separately sealed envelope, each firm shall place the cost proposal which shall provide a firm, fixed cost of design and construction and the bid security, if such is required. This envelope shall identify the RFP and be clearly marked "Cost Proposal".

Option #2 - Step Two – Selection:

A. For only the firms that the Technical Review Committee deemed to be the most highly qualified to perform the required services after considering their response to the RFQ under the factors set forth above (Step 1, B for Option #2), the Technical Review Committee shall first review the Project Design and Construction submittals of the most highly qualified firms and shall rank them according to responsiveness to the RFP and overall qualifications and shall assign each firm a score corresponding with the firm's ranking. Each firm shall be given a score from 1 to 10, with 10 being the highest score. This score shall account for 60% of the total point score for each firm. [For all firm(s) not deemed to be the most highly qualified to perform the required services, such Project Design and Construction submittals and the Request for Proposals for each firm shall be returned unopened to the respective firm(s).]

B. After completion of scoring pursuant to subsection A, upon the date and time set in the Request for Proposals, the cost proposals shall be publicly opened and read aloud. The firms shall be ranked from lowest cost to highest cost with one (1) point being assigned to the highest cost proposal and 10 points being allocated based on cost differential among the other proposals. This score shall account for 40% of the total point score for each firm.

C. The maximum possible total point score is 20 points.

D. The responsive design-builder with the highest score shall be recommended to the City Council.

E. In finally awarding a contract, the City Council shall set forth detailed reason(s) supporting its decision if the Council does not select the design-builder with the highest score.

F. The City may at any time prior to entering into contract reject all proposals and either solicit new proposals using different design criteria, budget constraints or qualifications or choose a different method for completion of the project.

G. The analysis of the proposals, or summary of results, will remain confidential until the contract has been negotiated and executed.

Stipend. As an inducement to qualified design-builders, the City may pay, but is not required to pay, a reasonable stipend, the amount of which shall be established and stated in the Request for Proposals, to each qualified design-builder whose proposal is responsive but not selected. Upon payment of the stipend to any unsuccessful design-builder, the City shall acquire a nonexclusive right to use the design submitted by the design-builder, and the design-builder shall have no further liability for the use of the design by the City in any manner. If the design-builder desires to retain all rights and interest in the design proposed, the design-builder shall forfeit the stipend.

Additional Provisions (Options 1 and 2).

A. In lieu of requiring both Performance Proposals and Cost Proposals, the City may establish a fixed dollar budget for the design-build project in the Request for Proposals and require only Performance

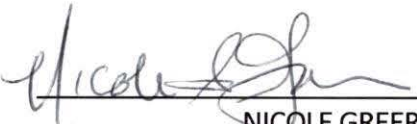
Proposals with the price being fixed for all firms. In this approach, the firm with the highest score after considering the Project Design and Construction submittals will be recommended by the Technical Review Committee to the City Council.

B. In accordance with Section 67.5060.17 RSMo, the payment bond requirements of Section 107.170 RSMo shall apply to the design-build project. All persons furnishing design services shall be deemed to be covered by the payment bond the same as any person furnishing labor and materials. The required performance bond for the design-builder shall not cover any damages of the type specified to be covered by the professional liability insurance required and stated in the Request for Proposals.

C. At the time of the award and following the award, the City may negotiate minor changes for the purpose of clarifying the design criteria and work to be done, provided that the negotiated changes would not affect the ranking of the proposals.


SECTION 2: This Ordinance shall take effect in accordance with Section 3.11(g) of the Charter.

ADOPTED THIS 20th DAY OF FEBRUARY, 2024.




NICOLE GREER
PRESIDENT, CITY COUNCIL

APPROVED THIS 20th DAY OF FEBRUARY, 2024.



DR. ROBERT HOFFMAN
MAYOR

ATTEST:



KELLIE HENKE
CITY CLERK

