

CITY COUNCIL
BUSINESS AND COMMUNITY AFFAIRS COMMITTEE MINUTES

May 9, 2013

The City Council Business and Community Affairs Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 9:05 a.m. in the Municipal Building Conference Room located at 201 West Gray on the 9th day of May, 2013, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Jungman, Williams, and Chairman Lockett

ABSENT: Councilmembers Kovach and Spaulding

OTHERS PRESENT: Mayor Cindy Rosenthal
Ms. Tessa Breder, Norman Chamber of Commerce
Ms. Joy Hampton, [The Norman Transcript](#)
Mr. Don Wood, Director, Norman Economic Development Coalition

STAFF PRESENT: Mr. Jeff Bryant, City Attorney
Mr. Mark Daniels, Utilities Engineer
Mr. Terry Floyd, Development Coordinator
Mr. Ken Komiske, Director of Utilities
Mr. Clint Mercer, Chief Accountant
Ms. Leah Messner, Assistant City Attorney
Mr. Shawn O’Leary, Director of Public Works
Mr. Scott Sturtz, City Engineer
Ms. Syndi Runyon, Administrative Technician IV

Item 1, being:

DISCUSSION REGARDING LOCAL VENDOR PREFERENCE POLICY AND CONTRACT SELECTION CRITERIA FOR ENGINEERING DESIGN CONTRACTS.

Chairman Lockett said there are pros and cons to preferences for local vendors and Council has discussed the topic several times. She said as the economy changes, people’s concerns change and she wanted to discuss local preference to let businesses in Norman know the City is keeping an interest in it.

In May 2010, Council adopted Resolution No. R-0910-114 establishing a Buy Local/Buy Fair philosophy to “maximize purchase of locally produced and Fair Trade Certified products in the process of procuring necessary goods for the City of Norman offices.” In January 2011, Council adopted Resolution No. R-1011-80 to establish an objective that the City should only exercise the preference for a local vendor when the low bidders are substantially equivalent, to ensure the City receives the best price.

Mr. Terry Floyd, Development Coordinator, said the Business and Community Affairs Committee (BACA) reviewed streamlining the development services process and expressed a desire to explore the process and method involved in selecting professional service consultants in the Public Works and Utilities Departments. He said while previous Local Vendor Preference Policies apply to products, supplies, and services that are acquired through competitive bidding practices, professional services are acquired through other means. For instance, third party medical, legal, and accounting services are acquired by the City using industry standard procedures. Professional services, including engineering, architecture, land surveying, and geotechnical are acquired by the City using an industry standard method called Qualifications-Based Selection (QBS).

LOCAL PREFERENCE – COMMODITIES AND SUPPLIES

Mr. Clint Mercer, Chief Accountant, said Article III, Section 5, of the City Charter established the City Manager as the City's Purchasing Agent and requires competitive bidding. He said Council adopted Ordinance No. O-1011-5 amending Article II, Section 8-205, giving preference to local vendors with offices in Norman in the event of a tie bid. He said the City wants to give preference to local vendors, but not to the point where it interfered with competitive bidding or costs associated with contracts. He highlighted pros and cons of local preference as follows:

PROS

- Promotes local economy
- Supports local employment
- Benefits local business owners

CONS

- Reduces competitiveness for purchases – fewer bidders
- Inflates costs
- Reduced purchasing power equals fewer capital projects/reduced City services or increased taxes to maintain current level of projects/services
- Appearance of favoritism – explanation of why not using lower bidder
- Who is a local business – home office versus branch locations
- Discouragement of other jurisdictions to use Norman businesses (reciprocity)

Councilmember Jungman said he is familiar with the system of giving points when rating a bid so it is not just costs that are considered. He said the bids have to be pretty close in points in order for the local business to prevail based upon their location. Mr. Mercer said the City's policy is based on the type of item being bid on and if items being bid on are substantially the same the local business will be awarded the bid, but there are no points involved. Councilmember Jungman asked if the City is looking to potentially extend that to professional contracts and Mr. Steve Lewis, City Manager, said this discussion is about commodities and supplies, but professional services will be discussed next.

Councilmember Williams asked if a tie is considered to be dead on is there a price range considered that would tip the scales and Mr. Mercer said local preference is generally given in the event of a tie. Mr. Mercer highlighted local preference policies for Oklahoma City, Tulsa, Enid, Edmond, Lawton, Midwest City, and Yukon. Mayor Rosenthal said some of the communities had a 5% preference and asked what that meant and Mr. Mercer said a bidder could be 5% higher and still be awarded the bid. Councilmember Williams said that eliminates the slim chance of a tie and Mr. Mercer said it does, but it also increases costs because you could potentially pay 5% more just to give the business to a local vendor.

Mr. Mercer said there are built-in advantages for local businesses in Norman, e.g., the City advertises in The Norman Transcript so local vendors will be the first to see the announcement, local vendors are closer so they have decreased delivery costs, it is more convenient for employees to obtain supplies, and familiarity with the City.

Councilmember Williams asked what a disadvantage of using a percentage would be other than paying that much more for product, and Mr. Lewis said disadvantages are basically the list of cons listed above. Chairman Lockett said if people think the bidding process is not fair, they will not bid because it is time consuming. She said in local preference, a local vendor gets a tax advantage that everyone pays for because in essence, if prices increase more taxes are paid so the process is not as cut and dry as it may seem. Councilmember Williams said setting a small percentage of even 1% loosens the chance of a tie bid and he is trying to determine the disadvantages of that. Mr. Lewis said Staff puts the business location in the bid tabulations so Council can see that Staff puts Norman first with Oklahoma City second and so forth, but if you get into percentages then you have to think about what is local. He said communities struggle with that question. He said Copelin's Office Supply is local, but they have an office in Oklahoma City and are Office Max and Office Depot local? Councilmember Williams said local preference is more common in places like Denver, Colorado, that have 700,000 people and as a business person who submits bids he has hit that roadblock before. Mr. Mercer said as a bidder, if you know you have to be 1%, 2%, or 5% better than the other guy, it can be discouraging especially if cost margins are tight. He said when that happens you get fewer vendors bidding and costs rise over time.

Mayor Rosenthal asked if a clearly local firm is within a certain margin, would it be possible to go to that local vendor and ask them if they can match the lowest price or would that be a violation of State law? Mr. Jeff Bryant, City Attorney, said the City has some flexibility under "home rule" to set its own rules so the City can do that, but he would be concerned about the impact of discouraging bidders. He said he would rather say the City is awarding the bid to the business because it is the lowest and *best* bidder meeting specifications rather than because they shaved prices. Councilmember Williams said there is also the angle of giving preference points to Oklahoma based versus Norman based and having a system to do that. Mr. Lewis said Council needs to think about the practical issue of whether or not they want to find themselves arbitrating bidding disputes. Councilmember Williams asked how many were awarded to local vendors in the last twelve months and if this is a big problem that local vendors are not being awarded bids and Mr. Floyd said no one has come to him from the business community complaining.

Mayor Rosenthal said she did not see a reason to change status quo, but it is good to review it from time to time. Mr. Lewis said the Finance Committee has discussed this issue many times and have not recommended any changes, but Staff would be happy to do more research. Chairman Lockett said she sees no reason to change the process at this time.

LOCAL PREFERENCE – PROFESSIONAL SERVICES

Mr. Shawn O'Leary, Director of Public Works, said as stated at the beginning of the meeting, professional design services including engineering, architecture, land surveying services are acquired through third parties using QBS. He said in 1982 the Oklahoma Legislature passed the State Consultants Act that mandates the use of the QBS selection process for professional services acquired by all State government entities. The City of Norman adopted the same process in the early 1980's and the most common professional services used by the City in this context are engineering and architectural services. This process is used predominantly by the Public Works and Utilities Departments due to the nature of the work.

Mr. O'Leary said cities do not bid professional services because they are buying expertise and ideas. He said design professionals generally believe the project design process is critical to the success of any major infrastructure project and the selection of the best design team for the project serves as the foundation of the design process. He said an excellent design team can save the City considerable time and money on a project. He said the City spends approximately \$2.5 million annually on engineering services and 77% of those contracts were awarded to Oklahoma firms and over 30% went to Norman firms, which is very impressive.

Mr. O’Leary said there are three basic phases to QBS; 1) selection of the most qualified firm, 2) definition of the Scope of Work, and 3) fee and contract negotiation. He said the first thing Staff does is prepare a basic description of the project to be built or the problem to be solved known as a Request for Proposal (RFP) inviting professional firms to submit statements of qualification to be considered for a contract. A pre-proposal meeting is held approximately two weeks before the proposal deadline to discuss specific project issues and answer any questions posed by consultants. After proposals are submitted, a five member Selection Committee, consisting of three Staff members and two private citizens, review the proposals and rank them on a point scale as follows:

- Technical approach 30 points
- Experience of key personnel (project team) 40 points
- References 20 points
- Oklahoma based firm 5 points
- Norman based firm 5 points

- Total 100 points

Mr. O’Leary said a design consultant is selected based on the proposal score or is invited for further interviews. During the interview process, firms are given a set time to present and answer questions posed by the Selection Committee and are scored based on the interview. The Selection Committee ranks the firms again based on the aggregate scores and finally recommends a firm for negotiation of a contract. Staff then works closely with the firm selected to refine the detailed Scope of Work for the project including all necessary tasks, schedules, and fees. If Staff and the consultant are unable to agree on the Scope of Work or fee schedule, contract negotiations cease and Staff notifies the second ranked firm to begin contract negotiations. He said it is not uncommon for the selection process to require up to twelve weeks and many of hours of Staff time prior to the contract being presented to Council for approval; however, the time is justifiable because most of the projects will serve the community for decades in providing critical City services. The consequences of error in design can include impacts to the health, safety, and welfare of Norman citizens not to mention increased costs and liability to the City.

Mr. O’Leary said he has never seen more competition in this field and recently received 32 submittals for a project, which he has never seen in his career. He said the Utilities Department uses a different ranking form because streets and bridges are different than disinfection of water, but they use the same general principle.

Mr. Ken Komiske, Director of Utilities, said Mr. O’Leary summed up the process really well. He said Staff has to consider the expertise of who they want to bid on projects. He said the City has one Water Treatment Plant and there is a certain expertise needed that may not come from a local engineering firm; however, there is recognition of localness. He said Staff considers how fast someone can get to the site if there is a problem, if they have a local office, and if someone is available to operators on a weekly basis.

Mayor Rosenthal asked why Public Works and Utilities do not use the same point system for local preference and Mr. Komiske said some engineering firms may be multi-national or international and have an office in Norman, but does that make them local? Mr. Sturtz, City Engineer, said if a firm has a local office, but may be using technical experts from out of State, he will give them one to three points instead of the maximum of five when ranking them. He said if the employees in the local office will be doing the work, he will give the firm the full five points because Staff knows they can call them and get results immediately versus having to contact someone from out of state. Chairman Lockett said some firms have offices in Norman that only consists of one person answering the phone. She said the City is looking for firms who are paying taxes to Norman and employing in Norman. Mr. O’Leary agreed and said while a firm may open an office in Norman that may consist of one engineer and someone answering phones, there are a few firms that have opened an office in Norman and grown over time. Mayor Rosenthal said another reason to locate in Norman is because Norman is a university town with

an engineering college producing engineers and firms can recruit the talent that is here. She wants to encourage local preference for professional services because those are the types of jobs the City wants to keep in the community. Mr. Sturtz assured Members that firms in Norman are competing for projects with or without the extra local preference points.

Mr. Lewis said the whole “buy local” movement is going around the country since the recession began and some communities have gotten the reputation of being a one or two engineer town. He said when that happens there is a perception that the engineering firm has a community locked up, but that is not the case in Norman since there is a variety of firms that have been awarded contracts over the years. He said it is a balancing act. Mayor Rosenthal thought Norman had that reputation a few years ago, although in her opinion it was a misrepresentation. She said Norman now has a diversity of firms working for them. Mr. Lewis said small towns grow, have construction projects, hire a big firm that solves problems and the City is happy with them so it becomes a cycle. Mr. O’Leary said another thing that happens is those firms become better positioned with a City’s system and the City has no reason to want another firm for particular engineering projects, which happens more with water systems than roads and bridges. He said City’s make those decisions for really good reasons and yes, it does look like they are focused on one firm. Councilmember Williams asked if a situation like that could typically drive costs up more than it should and Mr. O’Leary said no, not in his experience. He said engineers break everything down to the “nth” degree so Staff would give that firm the same scrutiny as any other firm and will negotiate very hard on every point. He said it falls to Staff to do their job to negotiate the best contract in not just price, but in getting what the community really needs.

Mayor Rosenthal said it is too early to see a trend, but after reviewing the information Staff provided, it seems the City is hiring more Norman firms and Mr. O’Leary agreed.

Mr. Don Wood, Director of the Norman Economic Development Coalition (NEDC), said engineering services is becoming a key area in Norman. Mr. O’Leary agreed and said he knows for a fact that ECHO Systems, a professional engineering services company, is hiring local graduates. Mr. Lewis said engineering services in general are becoming very competitive across the country.

Mayor Rosenthal said it seems that firms are forming a more collaborative process where three or four firms come together on one project and Mr. Komiske said that is true. He said firms will share their expertise on large projects. Mr. O’Leary said that shows humility on the part of a firm to negotiate with another firm if they are unable to provide a particular service.

Items submitted for the record

1. Memorandum dated May 2, 2013, from Terry Floyd, Development Coordinator, to Council Business and Community Affairs Committee, with Resolution No. R-0910-114; Ordinance No. O -1011-5; Resolution No. R-1011-80; Memorandum dated May 2, 2013, from Shawn O’Leary, Director of Public Works, to Steve Lewis, City Manager, and Terry Floyd, Development Coordinator; Contracts Awarded for Engineering Services – 2005-2013; Phase 2 Wastewater Treatment Plant Expansion Proposal Review Form; Proposal Ranking Form; and Request for Proposal Consultant Ranking Form
2. Informational sheet regarding – City Manager as Purchasing Agent, City of Norman Purchasing Ordinance, and Pros/Cons of Local Preferences

Item 2, being:

MISCELLANEOUS DISCUSSION.

Chairman Lockett asked the Committee to let her know if they wanted to discuss anything in particular and she could place it on the next agenda.

The meeting adjourned at 9:55 a.m.

ATTEST:

City Clerk

Mayor