



MEMORANDUM

LEGISLATIVE REFERENCE BUREAU

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To: Members of the Finance and Personnel Committee
From: Mary E. Turk, Legislative Fiscal Analyst
Kathryn Block, Assistant City Attorney
Date: May 10, 2012
Subject: File #111737 – Exceptions to Bid Ordinance – **REVISED 5/16/12**

Note Regarding this Revision: The table on page 4 of this document has been revised to reflect the limit of one year in duration for waivers granted by the Purchasing Director per the final sentence of s. 16-05-3-e. This provision is as follows:

“No waiver granted may be for a contract of longer than one year in duration or may extend the contract for longer than one year after issuance unless otherwise approved by the committee on finance and personnel.”

Current charter provisions allow exceptions to the general city bid requirements for city purchases, including the conditions under which the Purchasing Director may negotiate amendments to existing contracts and grant waivers. Common Council File Number 111737 adds 3 new exceptions to a provision which requires the approval of the Finance and Personnel Committee for the execution or amendment of certain service contracts. Two exceptions are additional conditions under which the Purchasing Director may grant a waiver and the third exception is one which essentially limits the contracts that require committee approval. To fully understand these proposed new exceptions requires review of the overall provision (s.16-05-3-e).

To fully interpret the various exceptions, the conditions of the following first sentence of paragraph e. must first be considered:

“e. When a single or sole source service contract of \$50,000 or more is executed or an existing single or sole source service contract of less than \$50,000 is amended and the original amount of the contract added to the amended amount of the contract is \$50,000 or greater, the contract or amendment shall not be effective unless approved by the committee on finance and personnel.”

This paragraph covers 6 possible scenarios, 3 in which there is no need for approval from the committee and 3 which would require the approval of the committee. These scenarios are as follows:

Those That Do Not Require Finance and Personnel Committee Approval

1. A single or sole source service contract executed for under \$50,000.
2. A single or sole source service contract that was originally less than \$50,000 and with an amendment remains under \$50,000.

3. A single or sole source service contract with an amendment that does not involve an increase in the amount of the contract.

Those That Do Require Finance and Personnel Committee Approval

1. A single or sole source service contract executed for \$50,000 or more.
2. A single or sole source service contract that was originally less than \$50,000 and with an amendment meets or exceeds \$50,000.
3. A single or sole source service contract that was originally \$50,000 or more and is amended for more.

If any of the scenarios exists that does not require committee approval, then the exceptions and requirements in the remaining provisions of the paragraph do not apply. If any of the scenarios exists that does require committee approval, then the following provisions, as proposed, do apply:

“This requirement shall not apply to >>one-time contract amendments of less than \$10,000 or to<< contracts or contract amendments, upon a written waiver by the city purchasing director, that are necessary to respond to emergency situations that threaten life, health or safety, [[øf]] services provided by the actuary designated under s. 36-15-13 >>, services related to proprietary products or services authorized under common council action<<.”

This sentence, as proposed, includes the following 5 potential exceptions:

1. One-time contract amendments of less than \$10,000.
2. Written waiver by the Purchasing Director for emergencies.
3. Written waiver by the Purchasing Director for actuarial services under Chapter 36.
4. Written waiver by the Purchasing Director for proprietary services.
5. Written waiver by the Purchasing Director for services authorized under common council action.

Exceptions 2 through 5 which require a written waiver from the Purchasing Director should be relatively clear, and the newly proposed ones (4 & 5) have been added for ease in the purchasing process with no loss of transparency. It is the first exception, “one-time contract amendments of less than \$10,000”, which requires greater exploration.

If committee approval was not needed under the conditions of the first sentence of the paragraph, this first exception need not be considered. So, for example, a single or sole source service contract could be amended any number of times, for any amount, as long as it remained less than \$50,000.

For those scenarios where committee approval was needed, this first exception would not apply to the first scenario relating to the execution of contracts over \$50,000 because there is no amendment; it is a new contract. It is in the case of the last 2 scenarios that this first exception comes into play, and it does so as follows:

A single or sole source service contract that was originally less than \$50,000 and with an amendment meets or exceeds \$50,000. OR A single or sole source service contract that was originally \$50,000 or more and is amended for more.

If the amendment is less than \$10,000, the “one-time” provision would apply and committee approval is not needed. However, approval would be needed for any future amendments unless a waiver is granted, regardless of amount, because the “one-time” provision has already been met.

If the amendment is \$10,000 or more, committee approval is needed unless a waiver is granted.

The provision of “one-time” does not apply to amendments made in scenarios that did not require committee approval due to the first sentence in the paragraph. For instance, let's assume Purchasing executed a contract for \$25,000. The first sentence doesn't apply - committee approval not needed. Then Purchasing amends the contract to increase the price to \$48,000. First sentence still doesn't apply - committee approval still not needed. Then Purchasing amends the contract to \$53,000. First sentence applies, but the amendment is for less than \$10,000 - committee approval still not needed. Then Purchasing amends the contract to \$54,000. First sentence applies and the “one-time” provision has already been exhausted - committee approval IS needed (unless a waiver was granted by the Purchasing Director).

The attached table provides a visual representation of this ordinance and the explanation above.

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		Contract Scenarios		Potential Exceptions					
				1	2	3	4	5	
				One-time Contract Amendments of < \$10,000		Written Waiver by Purchasing Director			
						Emergencies	Actuarial Services	Proprietary Services	Other Services Authorized by Common Council
Single or Sole Source Service Contract	F&P Committee Approval Required	1	\$50,000+	Not applicable to new single or sole source service contracts.					
		2	Originally <\$50,000 but \$50,000+ after amendment	Committee approval not required for one-time contract amendments of <\$10,000.					
		3	Originally \$50,000+ and increased after amendment	Approval required for second and all subsequent amendments, regardless of \$ amount of amendment.					
	F&P Committee Approval NOT Required	4	< \$50,000	Exceptions not applicable to single or sole source service contracts that do not require Committee approval.					
		5	Originally < \$50,000 and remains < \$50,000 after amendment						
		6	Amendment w/ no \$ increase						