

MEMORANDUM

To: Mayor and all Directors and Division Heads
From: Michael R. Gareau, Jr., Director of Law
Re: City Contracting Procedures
Date: July 14, 2011

Attached please find a Contracting Procedures Manual that has been updated to offer guidance to Directors and Division Heads in selecting the appropriate City contracting process for various categories of expenditures, revenue-generating contracts, and other contract matters, within their departments.

If you have any questions regarding this matter, please do not hesitate to contact me.

CITY CONTRACTING PROCEDURES MANUAL

(July 2011)

INTRODUCTION

The City Contracting Procedures Manual which follows is divided into the three sections based upon the following questions which you should first ask yourself before proceeding to make an expenditure or otherwise act:

- Do I want to make an expenditure of funds in order to purchase goods or services (Section I)?
- Do I want to agree to receive income, rent, or other monies or property on behalf of the City (Section II)?
- Do I want to enter into a contract or agreement that involves neither expending nor receiving money or property (Section III)?

In order to determine the correct contracting procedure to follow, first select the Section below that corresponds with the category that best addresses your question and then proceed through the Steps in that Section in the pages that follow to determine the correct contracting procedure that you should follow.

GENERAL RULES FOR ALL CONTRACTS

- As a general rule, the **ONLY** person with the authority to execute a contract is the Mayor. **Do not** sign a contract on behalf of the City of North Olmsted.
- No contract should be forwarded to the Mayor for signature unless all exhibits or referenced documents are attached.
- Never split a contract with a single vendor or contractor into multiple contracts for any reason. If you are uncertain as to whether the proposed purchase of goods and services is or should be more than one contract, ask the Director of Law.
- A contract that is in good form with all exhibits attached requires the signature by the Director of Law, Director of Finance and Mayor. The Mayor is the last person to sign the contract. An approval form (available from the Director of Finance) should be attached to every contract.
- If a change order is required after a contract has been signed, then notify the Director in charge of the division so that it can be brought to the Board of Control for approval. Do not authorize changes to contracts that are in effect without discussing with the Director of Law and your Director.
- If for any reason you require legislation, please attach the proposed contract and all exhibits to the legislative request and forward it to the Director, who shall in turn forward it to the Clerk of Council for

processing. If it is an emergency, please explain the emergency in the request.

- Once a contract is executed by the Mayor and the contractor, a requisition to purchase should be signed by the Division Head and Director and forwarded to the Finance Department along with the executed contract so that the funds are encumbered. Finance will then scan the contract into the system and it will appear on the shared directory.
- Remember that you should always keep documents relative to the contract process, including proposals / bids that were not accepted and notes taken on the selection process. These are public records and they also demonstrate the propriety of the selection process.
- If you approached by a current or former North Olmsted employee or a family member representing an entity interested in doing business with the City of North Olmsted, notify the Director of Law immediately.
- If you believe at any time that you have a personal or financial conflict of interest in any business or transaction or you believe that your independence of judgment or performance of your official duties MAY be impaired in the discharge of your duties, notify the Director of Law before taking any further action. See NOCO § 107.
- Gifts and paid meals of any amount must be declined when dealing with vendors / contractors.

SECTION I

DO I WANT TO MAKE AN EXPENDITURE IN ORDER TO PURCHASE GOODS OR SERVICES?

If you want to expend city funds to purchase goods or services for your department or division, proceed through the steps listed below to determine the correct contracting procedure for your proposed expenditure. If you do not want to expend money, but instead want to enter into a contract in which the City will receive income, rent or other money or property, then proceed to Section II ("Do I want to receive income, rent, or other monies or property on behalf of the City") below.

Q: Is money appropriated to purchase goods or services of any dollar amount?

Q: Is there enough money appropriated to cover the total cost of the goods or services?

If your answer is "No" to either question, then stop. You must contact the Finance Department before proceeding.

STEP 1 - Large Expenditures

✓ Is my proposed expenditure more than \$25,000?

- ✓ If it is not more than \$25,000, then disregard Step 1 and proceed to **STEP 2.**
- ✓ If your expenditure is more than \$25,000, you must submit a legislative request to the Mayor for City Council to authorize the expenditure in accordance with one of the two paragraphs that follows:

- For most expenditures in excess of \$25,000, the legislative request should request authority for your Director to advertise for competitive bids based upon plans and specifications, and for the Mayor, following approval of the Board of Control, to enter into a written contract with the lowest and best bidder. Please note that the Charter recognizes the design / build process as a means to select the lowest and best bidder. If you believe that your proposal is of such a character that a “Design / Build” model may be appropriate, contact the Law Department for guidance.
- For the following categories of expenditures in excess of \$25,000, however, the legislative request may request Council to authorize the expenditure without competitive bidding and/or a written contract:
 - Acquisitions of Real Estate;
 - Discharges of Non-Contractual Claims against the City;
 - Personal Services (Follow Step 4 below)
 - Joint Uses of Facilities or Exercises of Powers with other Political Subdivisions;
 - During Real and Present Emergencies in order to immediately provide for the Health, Safety or Welfare of North Olmsted residents;
 - Pursuant to the State Purchase Program established by State statutes, including R.C. §125.04.

Even though contracts for the above six types of expenditure need not be competitively bid, any contract for any such expenditure still must be submitted to and approved by the Board of Control before the Mayor may sign it.

STEP 2 – Small Expenditures

- ✓ Is my proposed expenditure \$5,000 or less?
- ✓ If it is more than \$5,000, but less than \$25,000, then disregard Step 2 and proceed to **STEP 3.**
- ✓ If your expenditure is for \$5,000 or less, you must follow one of the two paragraphs that follows:
 - If a written contract is required by the vendor or recommended by Finance or Law, §131.05 of the Codified Ordinances requires that the contract must be submitted to the following

City officials for authorization before you may make the expenditure:

- The Law Department for contract review;
 - The Finance Department for a fiscal officer certificate;
 - The Mayor for signature.
- If no written contract is required or recommended, the Director or Division Head may submit a purchase order request to Finance Department, and you must follow Finance Department procedure prior to making the expenditure:
 - The requisition to purchase must be signed by the Division Head and Director and sent to the Finance Department.
 - If the amount of the Purchase Order is more than \$300.00, then you must obtain three (3) quotes and send those written quotes to Finance along with the requisition to purchase. A form is online and available to document the three quote process.
 - **Goods and services cannot be ordered until a signed and approved purchase order is returned to the requesting party.** You should contact the Finance Department if it is an actual emergency.

STEP 3 – Medium Expenditures

- ✓ Does my proposed expenditure, which is greater than \$5,000 but not more than \$25,000, involve personal services?
- ✓ If personal services are involved, then disregard Step 3 and proceed to **STEP 4**.
- ✓ If personal services are not involved, follow the paragraph below that applies to your expenditures:
 - If a written contract is required or recommended by Finance or Law, you must submit a legislative request to the Mayor for legislation to authorize the Mayor to enter into the contract.
 - If no written contract is required or recommended, the Director or Division Head may submit a purchase order request to Finance Department, and then you must follow Finance Department purchase order procedures (outlined above in Step 2) prior to making the expenditure.

STEP 4 - Personal Services

- ✓ For personal services involving an expenditure greater than \$5,000, you must follow the procedures set forth in Chapter 112 of the Codified Ordinances.
- ✓ This City Ordinance requires that you follow the procedure in the two paragraphs below that is applicable to your expenditure:
 - If your proposed expenditure is \$25,000 or less, you do not require Council authorization and your Director should follow the selection and contracting process set forth in §112.05 of the Codified Ordinances. This requires:
 - Director establishes own process that is designed to provide for “competition and objectivity” in selection of a firm.
 - Select the best available firm and negotiate a contract.
 - The negotiated contract should then be submitted to the Director of Law for review and approval.
 - After approval by the Director of Law, the contract should be submitted to the Board of Control for its review of the process used and award of a contract.
 - Finally, Director of Finance must attach her fiscal officer certificate to the contract and the Mayor must sign the contract.
 - If your proposed expenditure for personal services will be greater than \$25,000, then you must do the following:
 - Submit legislative request to Mayor to initiate process to obtain Council authorization to conduct either a RFQ (Request for Qualifications) or RFP (Request for Proposals) process. See NOCO §112.07 and 112.08.
 - Create a Selection Committee. See NOCO §112.04.
 - After Council authorization has been obtained, advertise your request in a newspaper of general circulation and, in addition, you may specifically invite selected firms to submit their statement of qualifications (SOQ) or proposal as applicable.
 - Selection Committee to review and rank received SOQs or Proposals, as applicable.
 - If SOQs are involved, rank top three and obtain technical proposals, before negotiating contract with highest ranked.
 - If RFPs are involved, enter into discussions with at least the top two ranked proposers.

- When all information is obtained from proposers in either the SOQ or RFP process, negotiate a contract with highest ranked proposer.
 - Obtain review and approval of your negotiated contract from Director of Law.
 - Submit approved negotiated contract to Board of Control for award.
 - Mayor to sign awarded contract, and Director of Finance to attach fiscal officer certificate.
- You may, with Mayor’s approval, submit a Legislative Request for Council to dispense with the RFQ or RFP process if any of the following exceptions to those processes apply:
 - The Director determines that an emergency exists.
 - The personal services involve the City’s golf pro, gymnastics instructor, tennis instructor, ice skating instructor, bond counsel, investment firm, or any “similar independent contractors who provide either instructional or professional services of a continuing nature to City residents or officials.”
 - The personal services sought are so unique or are of such a specialized nature that conducting a formal RFP or RFQ process would not likely result in the City obtaining proposals from at least two qualified firms.

SECTION II

DO I WANT TO RECEIVE INCOME, RENT OR OTHER MONIES OR PROPERTY ON BEHALF OF THE CITY?

If you do want to receive income, rent or other monies or property on behalf of the City, follow the Steps listed below. If instead you wish to enter into contract or other agreement that does not involve either expending money or receiving money or property, then proceed to Section III below.

STEP 1 - Grants

- ✓ Is a grant involved?
- ✓ If not, then disregard Step 1 and proceed to **Step 2**
- ✓ If a grant is involved, then, **before you apply for the grant**, you must prepare a legislative request and submit it to the Mayor for his approval. The legislative request should ask that Council authorize the applicable Director to apply for the grant, and, if it is awarded, that the Mayor to be authorized to accept it and to enter into any agreement that is required as a condition to the City's acceptance of the grant.

- ✓ It is important to note is the legislative request whether the City will be required to provide matching funds or leverage in connection with acceptance of the grant. If so, how much will be required.

STEP 2 – Donations

- ✓ Is a donation of property or money involved?
- ✓ If not, then disregard Step 2 and proceed to **Step 3**
- ✓ If the proposed donation has a value of less than \$250, is unconditional as defined in NOCO §131.06(C), and does not require any matching funds or property by the City, then the Mayor may accept it on behalf of the City without enabling legislation.
- ✓ If the proposed donation has a value of \$250 or more, but no greater than \$1000, then the Mayor may accept it without enabling legislation, but he must first submit a report to the Clerk of Council providing Council with certain specified information regarding the donation. See NOCO §131.06(B).
- ✓ If the donation has a value greater than \$1000, then you must prepare a legislative request and submit it to the Mayor. The request should seek Council authorization to accept the donation and should include any conditions and other relevant information regarding the proposed donation, including its fair market value.

STEP 3 – Revenue-Generating Contracts

- ✓ Is a vendor or other person or entity involved who proposes to use City grounds or facilities to sell goods or provide a service that will generate revenue for the City, that is, the City will receive rent, a fee, income, compensation, a commission or any other form of revenue as a result of the proposal?
- ✓ If not, then disregard **Step 3** and proceed to the next Section below.
- ✓ If it is such a revenue-generating as described above, then the following procedure, set forth in §111.01 of the Codified Ordinances, must be followed:
 - Prepare a proposal;
 - Advertise in a newspaper of general circulation for other vendors to submit proposals;
 - Submit all proposals to Board of Control for review and recommendation;
 - Submit legislative request for Council to authorize the Mayor to enter into a contract with the vendor submitting the most favorable proposal.

- ✓ There are several exceptions to these requirements that are set out in paragraphs (c) and (d) of NOCO §111.01.
 - Paragraph (c) provides an exception from the revenue-generating contract process for franchise agreements, sales or leases of real property, sales of personal property under NOCO §525.15 and Chapter 955, and contracts for the rental of ice time at the Recreation Center.
 - Paragraph (c) provides an exception for contracts where the receipt of funds arises from the sale of advertising space by the City in City publications or upon fixtures at City property. If a contract for the sale of advertising space is less than five thousand dollars (\$5,000.00), then the Mayor may execute the contract without City Council authorization if the Mayor requests and obtains a written opinion from the Director of Law that the contract is in proper form and substance. If a contract for the sale of advertising is for more than five thousand dollars (\$5,000.00), then the Mayor shall, prior to executing such contract, obtain express authorization from City Council.
 - Paragraph (d) establishes a special permit procedure for community or charitable groups to obtain Park Concessions Permits from the Mayor in order to sell goods on City park properties.

SECTION III

DO I WANT THE CITY TO ENTER INTO A WRITTEN CONTRACT OR AGREEMENT THAT INVOLVES NEITHER AN EXPENDITURE NOR RECEIPT OF MONEY.

Again - only the Mayor may sign contracts or agreements on behalf of the City. A "contract or agreement" is any piece of paper that you receive that requests a signature and contains any terms or conditions that are binding upon the City of North Olmsted.

If you have a written contract or agreement that requires the signature of a City official, but does not involve an expenditure or receipt of any funds, you should immediately contact your Director and/or the Mayor for instruction. City Council, in most instances, must adopt a resolution that will authorize the Mayor to sign that contract or agreement on behalf of the City. Regardless of whether or not Council authorization is required, however, **the Mayor is the only** City official who may sign contracts.

CALL THE LAW DEPARTMENT

I encourage you to contact the Law Department (716-4261) or Michael R. Gareau, Jr. (440-454-3014 cell)(440-777-1500 – private practice) whenever you have any specific

questions regarding application of the procedures set forth in this Outline as they relate to a specific proposed expenditure, receipt of funds, or contract or other agreement.

Respectfully submitted,

Michael R. Gareau, Jr.
Director of Law

Dated: July 14, 2011