MUNICIPAL CONTRACTS: THE PROCESS FROM START TO FINISH

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BACKGROUND

- The firm Sheets & Crossfield, P.C. represents the City of Round Rock, Texas and has since 1977.
- Stephan L. Sheets is the City Attorney. I am one of 5 additional attorneys that assists in representing the City. My area of expertise is contracts and employment law.
- Round Rock has a population of over 100,000 and is located 15 miles north of Austin.
TOPIC OVERVIEW

• Types of municipal contracts
• Stream-lined process
• Preparation
• Drafting
• Execution
• Form 1295
WHAT IS A CONTRACT??

“An agreement, upon sufficient consideration, to do or not do a particular thing.”

Black’s Law Dictionary
PARTS OF A LEGAL CONTRACT

To be legally binding, a contract must consist of certain elements:

- A Meeting of the Minds (Both parties must agree on the exact terms)
- Intention to be Legally Bound (If a contract contains a clause that refers to parties not wanting to have the document enforced by a court of law, it is not legally binding)
- Consideration (One party promises something to another party in exchange for something from that party)
- Other Elements: Properly Signed and Dated; Appropriate Mental Capacity; and be of Legal Age to Sign
COMMON TYPES OF MUNICIPAL CONTRACTS

• Procurement Contracts
• Professional Services Contracts
• Construction Contracts
• Interlocal Cooperation Contracts
PROCUREMENT

Definition:

“Procurement is the acquisition of goods, services or works from an outside external source. It is favourable that the goods, services or works are appropriate and that they are procured at the best possible cost to meet the needs of the purchaser in terms of quality and quantity, time and location....”

Wikipedia
MUNICIPAL PROCUREMENT LAWS

The Texas Local Government Code requires that before a city enter into a contract for the purchase of most goods and services that require and expenditure of more than $50,000, unless an exception applies, the city must:

- comply with statutory procedures for competitive sealed bidding or competitive sealed proposals;
- Use the reverse auction procedure for purchasing; or
- Comply with certain statutorily prescribed methods of construction delivery methods.
PROFESSIONAL SERVICES

- Professional Services Procurement Act (Texas Government Code 2254.002)
- Professional services are services of architects, engineers, certified public accountants, land surveyors, physicians, optometrists, landscape architects, geoscientists, or state-certified real estate appraisers.
- Are they any other professional services??
- Prohibited from using competitive bidding procedures!
CONSTRUCTION

Alternate Delivery Methods (Government Code Section 2269)

• Competitive bidding method (Different then LGC “Competitive Bidding”)
• Construction manager-agent
• Construction manager at-risk
• Design-build method
Interlocal Cooperation Act, Local Government Code 791.001, allows a city to enter into an agreement with another local government entity to:

- Perform specific governmental functions and services (i.e. waste collection, fire protection, etc...)
- To purchase goods (and services reasonably related to the operation and maintenance of the goods) from that entity.
- Cooperative purchasing programs (Texas Local Government Code 271, Subchapter D).
STREAMLINED PROCESS
DEFINED AND CONSISTENT PROCESS

- Contract Liaison
- Defined Time Parameters
- Standardized Contract Request Form
- Point of Contact at Requesting Department
- Contract Log
- COMMUNICATION
PREPARATION
• What type of contract are you drafting?
• Were the appropriate procurement steps followed?
• If it is a Supplemental Agreement, review the original Agreement.
• What is the correct name of the company the city is contracting with?...Is it a sole proprietor? A partnership? A corporation?
“Before anything else, preparation is the key to success.”

Alexander Graham Bell

• What goods/services is the city purchasing?
• How much is the city paying for the goods/services?
• What is the length of the contract? Until services are successfully delivered? Months? Years? Automatic renewal periods?
WHAT LANGUAGE NEEDS TO BE IN THE CONTRACT TO PROTECT THE CITY IF SOMETHING GOES WRONG?

• Termination for convenience
  ➢ Contract can be terminated for any reason. Usually a certain number of days notice is included in the contract (i.e. with 30 days notice to the nonterminating party).

• Termination for cause (default)
  ➢ Breach of a term of the contract.
DON’T FORGET...

• Release
  - The giving or discharging of a right of action which a party has or may claim against the other party.

• Indemnification
  - Where one party agrees to take on the obligation to pay for any loss or damage that has been or might be incurred by the other party.

• Waiver
  - An abandonment of a right to sue the other party.
DRAFTING
CAUTION!

- No two contracts are exactly the same. Templates can be useful, but be careful!
- Aim to be concise, thorough, and clear.
- Proofread!
EXECUTION
• Who is from the City is authorized to sign the contract?
• Does authorization of the contract have to approved by Resolution or Ordinance?
• Be aware of deadlines for execution.
• Have a streamlined process for execution.
• Has a Form 1295 been completed?
CHANGES TO A CONTRACT ONCE IT HAS BEEN EXECUTED

- Change Order
- Amendment
- Supplemental Agreement
  - If multiple Amendments or Supplemental Agreements makes sure they are properly numbered.
  - Review the original Agreement.
PUBLIC INFORMATION ACT

Section 552.104 of the Texas Government Code provides:

- Information is excepted from the requirements of Section 552.021 if it is information that, if released would give advantage to a competitor or bidder.

*Generally, this does not exempt bids from public disclosure after bidding is completed and a contract is executed.*
QUESTIONS?
Contact Information

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