



CITY OF TOPEKA

POLICY AND FINANCE COMMITTEE

CITY COUNCIL COMMITTEE MEETING MINUTES

CITY COUNCIL

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Date: March 19, 2021

Time: 10:00 a.m.

Location: 1st Floor Conference Room; Holliday Bldg 620 SE Madison

Attendance

Committee members Present: Hannah Naeger, Spencer Duncan, Tony Emerson

City Staff Present: Brent Trout (City Manager), Jessica Lamendola (Finance Director), Leigha Boling (Contracts & Procurements), Bill Fiander (Planning Director), Richard Faulkner (Development Services), Bill Cochran (Chief of Staff)

1) Call to Order

Committee member Duncan called the meeting to order at 10:00am.

2) Election of Committee Chair

Committee member Emerson nominated Committee member Duncan to serve as Committee Chair. Committee member Naeger seconded the nomination.

Committee member Duncan accepted the nomination. 3:0 Committee member Duncan will serve as the 2021 Chair.

3) Discussion: Process for reviewing overall 2015 IEBC approval process

[Items pertaining to this section can be found as Supplemental Material on the Policy & Finance Committee's webpage: <https://www.topeka.org/citycouncil/policy-finance-committee>]

Chairman Duncan noted this item was recently brought to the Governing Body as a discussion item on February 16, 2021, and was then referred to the Committee. City Manager Brent Trout stated Staff would like to know what the goal of the Governing Body is as it relates to the evaluation of the codes. The process has included a review on a four-year basis, stakeholder input, meetings with the various boards that cover these areas. In the past, the Governing Body wanted to hear what people actually using the code have to say about it, based on local amendments and the year of code. Staff's take-away from the Governing Body's discussion, was that there was a desire to go away from the way this process had been taking place.

Planning Director, Bill Fiander provided background regarding when past Governing Bodies have adopted the International Existing Building Code (IEBC). Following further discussion, the committee did not commence with a formal

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motion, however voiced consensus to update the building codes on an “as you go” basis, with the latest possible version available. Direction to Staff also included reducing the length of the typical review schedule to minimize delays and to be as efficient as possible with the review time. Staff will be now be bringing the 2021 versions to the Governing Body for adoption later this year.

4) Consultant Contracts & Governing Body approval [video 35:50 minute mark]
City Manager Trout noted that Staff had conducted research to determine current requirements, and found that there is currently no requirement related to having contracts go through the Governing Body for approval. The code does specifically state that the City Manager has the authority to sign all contracts binding the city, unless Council approval of the contract or subject matter is required by city ordinance or resolution. Based on the current form of government, this task was delegated to the City Manager. However, the code states that the Governing Body could make the decision to approve a designated and specified type of contract, should they choose to create that change. City Manager Trout sought direction and input from the committee. From a staff standpoint, it would be best practice to continue as they have been.

Leigha Boling, Director of Contracts and Procurement, provided a memo to the committee [*Video 45:40 minute mark. This information can be found on the committee's webpage*]. The memo states that the Contracts and Procurement division conducted a review of contracts awarded for professional services. The results showed that 33 bids were completed and resulted in professional service agreements in excess of \$50,000 over the last four years (six in 2020, ten in 2019, thirteen in 2018, and four in 2017). City Manager Trout noted that the number of contracts per year with the \$50,000 threshold was not a large amount.

Considerations brought to the Committee for guidance by the City Manager included:

- Should the Governing Body deny a contract, or ask for a contract to be pulled in order to have time to better understand the details of said contract, what would those repercussions look like? Staff, serving as the subject matter experts who made a decision to hire a specific consultant based on their analysis, would now be required to reconcile with a decision made by individuals who did not participate in all of the prior discussions and decision processes.
- There is also a desire, by Governing Body members, to incorporate local preference into contracts for consultants.
- There has also been discussion with wanting to increase the diversity in suppliers and contractors, and how would that consideration to incorporate minority owned business, and women owned business, veteran owned business, and disabled owned businesses into how they would receive

additional consideration when these types of decisions are made regarding consultant approvals.

City Manager Trout noted that staff would not bring a consultant contract forward for a project, unless the project had already been approved.

Chairman Duncan stated he had envisioned the goal of bringing this topic forward was to provide more transparency in these contracts, to the public. The intention was not to involve the Governing Body in the fine details of the process, but rather the goal is to understand the level of staff involvement within the process that they would take before formally bringing it to the Governing Body. The goal is to get approval before the contract is officially signed off on by the City Manager. Chairman Duncan was impartial to whether approval was sought immediately after staff selected someone, or done after every agreement to that contract had been determined.

Chairman Duncan also stated he would feel placement of these contracts onto the Consent Agenda, which would allow the Governing Body to only pull contracts that were felt to have additional information provided, rather than full-fledged presentations. This process would put the items to the public for some type of discussion and transparency of the process.

To address the question from City Manager Trout about the process for a denial of a contract, Chairman Duncan stated that the City of Topeka serves as an outlier for this process, as other peer-cities have already established some level of this process. He suggested reaching out to cities such as Prairie Village, Wichita, Manhattan, City of Shawnee, and Shawnee County to inquire as to their process when they encounter a rejection.

A concern in the staff memo was related to concerns about delaying the process. Chairman Duncan referenced other cities and their ability to work through the process. Another suggestion was to be clear with vendors about the new process and timeline.

Committee member Naeger stated she had concerns centered on holding up projects and not being able to provide timely recommendations, which would ultimately hold up services to the citizens. She felt more comfortable with the suggestion of adding those items to the consent agenda, which would allow for public record, but would also keep moving the items through in a timely manner.

Leigha Boling, Director of Contracts and Procurements, presented a memo reviewing the process for contracts. [*This memo can be found on the committee's webpage*].

Presentation Highlights

- Current practice is to approve contracts with approval from the City Manager.
- In the 4 year review, there were 33 professional service contracts that exceeded \$50,000. Those went through the competitive Request For Proposal (RFP) process, which is a sealed bid process that is based on qualifications.
- Professional Services is defined as being administrative or technical consulting services, financial and accounting services, information technology services, photographic art or marketing services, architects, engineers, and appraisers.
- These services are based on the professional competence in the field, and is a qualification-based selection process.
- When a RFP is placed out for bid, it does fall within the Topeka Municipal Code (TMC) under certain standards for that process.
 - The RFP is solicited to the public for bidding and proposal submissions in the 10 days after the date it has been published in the city's newspaper.
 - Those advertisement dates land on Monday and are on the street for the minimum of 10 days following. Best practices by the National Public Procurement is 30 days.
 - Depending on the circumstances and the preference for obtaining the services from a professional consultant, staff gauge that and try to stay true to the 30 day standard.
 - Another requirement for this process centers on notification. TMC requires all vendors who have elected to be notified to be sent notification via the City's electronic bidding system. With regard to Professional Services, there are generally hundreds of email notifications that go out to vendors.
 - Vendors manage their own profile within the electronic system, and have their own username and password that is specific to their business, and that is how they log in and respond to bid events.
 - The bids are sealed until the date disclosed within the bid, per TMC that is 2:00pm. It is a public bid opening. During COVID-19, the public has not been allowed to come into the office, however staff is communicating over the phone and providing bid tabulations. This is occurring for every bid opening for the duration of the pandemic restriction timeframe.
- The RFP development process takes about two weeks for the office and Procurement buyer, assigned to a designated area, to develop the specifications for the project to include what the City is looking for, what the project entails, and to truly understand what information is trying to be

obtained. When reviewing an RFP, staff is wanting to understand the end goal and final outcome. This information shapes how the specifications are developed.

- Following the proposal deadline, the proposals received are sent to the requesting department's subject matter expert. That person then devises a review committee to ensure appropriate guidelines are followed and that measures are consistent throughout every single process. The evaluation period may take up to 4-6 weeks, because some of the proposals are hundreds of pages long.
- Per TMC and policy, the City reserves the right to interview a short list of firms if that is the intention. The Procurement buyer schedules those interviews and hosts the interview process.
- Once the interview process is complete, additional evaluations are conducted based on the information gathered during the interview. During this time, the evaluation committee then comes up with a recommendation for the award. The recommendation for award goes to the City Manager.
- The City Manager reviews the justification memo for the recommendation. The following step cannot be completed until/unless the City Manager signs off stating that he accepts the evaluation committee's recommendation.
- Following the acceptance from the City Manager, the negotiation process begins.
- Because of some of the very detailed information that is provided, and possibility of proprietary information being in that information, Procurement staff wants to ensure protection and confidentiality of those items.
- The Evaluation Committee process also follows the National Procurement best practices guidelines.
- Once the negotiation process has completed, the finalized contract is sent to the Contracts and Procurement office, where a final review is completed to ensure everything is adequate for what was bid, and that it aligns with the specifications.
- From Contracts and Procurements, the contract is then sent to the City's Legal Department, where the City Attorney reviews those contracts. This process is completed for every contract the City Manager signs off on.

- Once it leaves the Legal Department, the contract is sent to the City's Finance Department, where the accounting unit and funding information is reviewed. If it meets requirements, the Administrative and Financial Services Director signs off on it.
- From Finance, the contract is sent to the City Clerk's office, and then a final trip through the City Manager's office for a final review and signature.
- This extensive review process is not only completed for the proposals that are received, but also to ensure the best quality and value will be provided for the dollars spent. The process is also used for getting the contracts approved, reviewed, and ensuring the City is falling within all of the State statutes that are part of the City's policy, and municipal code.
- Director Boling noted that a number of items found in the memo outline some of the potential concerns or items that may come up or be developed if the contract process goes through the Governing Body process. Primarily, if the approval extends beyond the City Manager's review, an additional time requirement will be needed for that approval process which will extend the duration of getting an executed contract put in place.

Questions from the Committee

- Does the City traditionally require form contracts to be submitted with bids, as part of that general process? Or do we accept bids and then review first drafts of contracts? Director Boling stated the process depends on the circumstances surrounding is trying to be acquired in the bid. Generally, consultant contracts will come after the proposals. It is our boilerplate most of the time. There are different circumstances, however "we" incorporate that firm's proposal as an exhibit to the contract, so that they are bound by those terms that they provide.

Joe Ledbetter provided public comment. Mr. Ledbetter voiced concern over the process. He does not feel the Governing Body has been included in the "extensive review" portion of the process that other staff is engaged in, and made comparisons between processes with Shawnee County and City of Topeka.

Committee questioning continued:

- Chairman Duncan stated it was his understanding that there is no state law that actually requires competitive bidding for professional services. Staff confirmed. Chairman inquired if the requirement is in the City's policy or in the TMC directing that every department follow the same process that Director Boling outlined, when looking for someone to provide these types of services. City Manager Trout clarified that anything over \$50,000 follows the current

RFP process. If it is under \$50,000, the City can select the firm of their choosing.

Mary Feighny, Deputy City Attorney, provided comment with regard to the state statute. There is currently no state law that requires bidding for professional services contracts.

City Manager Trout noted that the City Charter states the "City Manager shall have the power and it shall be in his/her duty to sign all contracts binding the City, unless the Council approved the contract, or if subject matter is required by City ordinance or resolution, State or Federal Law, or other City officers or employees are specifically authorized by ordinance to approve the signed contracts". City Manager Trout clarified that the City of Topeka's form of government is different from that of Shawnee County. If the Governing Body would like to change that process from how it is currently done, the City Charter includes language that would allow this to take place. He provided a few examples of what potential language could look like. The Charter Ordinance was designed to allow for efficient movement of contracts and processes through the system so that they do not have to come back to the Governing Body. The current process also removes political issues that might occur based on voting, ownership, etc. It does not have to appear back before the Governing Body, but again, the choice lies with the Governing Body as to how they want to change the process.

Chairman Duncan stated he would like to have something put in front of the Governing Body, whether it is something similar to what he outlined earlier particularly to how it relates to professional services, with the option to discuss others. He is not asking the other committee members to make a final decision at this meeting, but he would like to ask Staff to work with him on some different scenarios that could be brought back to the Committee for additional discussion and consideration.

Committee member Emerson commented that he is familiar with the City's current process, and how it compares to the number of other cities' processes, from the bidder's standpoint. He stated the way Topeka advertises the projects and the way they allow the public to get on and look at any of the bid documents, project plans, etc (for free), has placed the City in a gold standard for the last three or four years, at least in the public works realm. He noted that he is less familiar with the other professional services contracts. At this time, he would like to look more into possibly adding these contracts to the Governing Body consent agenda section to allow for additional transparency. He feels Topeka has an excellent purchasing process, and stated that some of the other bodies that were mentioned earlier are actually looking at Topeka's process to possibly adopt pieces of it, such as how bids, plans and specifications go out.

Joe Ledbetter provided public comment. Mr. Ledbetter voiced concern over the process. He does not feel the Governing Body has been included in the “extensive review” portion of the process that other staff is engaged in, and made comparisons between processes with Shawnee County and City of Topeka.

Chief of Staff Bill Cochran noted that other municipalities may not have the same form of government that Topeka has, and that difference may play a factor into how their process is handled. Deputy Attorney Feighny provided that information. Examples included: Prairie Village which has a mayor/council form of government, Manhattan has a commission/manager form of government. Deputy Attorney Feighny reminded everyone that with the current form of government for the City of Topeka, the Governing Body serves as the policy makers and the City Manager addresses the day-to-day business. Chairman Duncan noted that Exhibit B of the memo provided by staff, there are seven or eight other cities listed that also have a council-manager form of government and also have some type of oversight within the contracts. He requested additional information or a correction from staff if the information on the memo was no longer correct.

Committee member Naeger stated that she was wary of holding the government back from operating as efficiently as possible. She stated that the City of Topeka City Council member positions are officially defined as part-time positions, and noted that many of the current members work a full time job in addition to their service as a council member. Adding this contract review process to things expected of the council, would be additional duties and as such Committee member Naeger would like to include a review of compensation if consideration is made to review the current form of government.

Chairman Duncan commented that the Governing Body does in fact, to some degree, do this process on the back end of each month as they review and approve the monthly expenditures.

Chairman Duncan ended this portion of the conversation by stating he is not asking for staff to change anything at this time, but would like to continue to have additional conversations to include scenarios as to what this could look like.

5) Future meeting topics

City Manager noted that local preference and how we chose to incorporate or not incorporate in quality-based selection process. Along a similar line, discussion had been mentioned to look at disabled, minority, veteran, and women owned businesses and trying to make sure the City has a diverse suppliers group.

The residency requirement was another topic that had been mentioned to bring to the committee.

Chairman Duncan agreed that those were the topics he was interested in bringing further conversation to future meetings.

No Monday morning or Friday afternoon meetings. Next meeting will be TBD, and will be posted to the City of Topeka Public Calendar once known.

6) Schedule next meeting; Adjourn

Future date will be determined at a later time, however the committee would like to meet in April. Chairman Duncan adjourned the meeting at 11:19am.

The video of this meeting can be viewed at: <https://youtu.be/BTirQsbmD2I>