

ORDINANCE NO. 13,848

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, by amending Sections 2-723, 2-724, 2-725, 2-729, 2-732, 2-735, and 2-736 thereof, increasing the minimum dollar amounts of purchases subject to the competitive bidding requirement, subject to the requirement of advertisement, and subject to approval by the city council or city manager; providing additional exemptions from the competitive bidding requirement; requiring that reasons for rejection of a bid be filed in the office of the purchasing agent; and providing that the city manager or his or her designee may waive the requirement of a performance bond on purchase contracts.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, is hereby amended by repealing Section 2-725 thereof and enacting a new Section 2-725, relating to contracts exempt from bidding, as follows:

**2-723. COMPETITIVE BIDDING AND ADVERTISEMENT.**

(a) Except as otherwise provided, all purchase orders or contracts of whatever nature, made by or on behalf of the city, for independent contractors' services or work or the purchase, lease or sale of personal property, materials, equipment or supplies or the granting of any concession, involving amounts in excess of \$15,000.00, shall be let by free and open competitive bidding after advertisement, to the lowest responsible or, in the appropriate instance, to the highest responsible bidder, depending upon whether the city is to expend or receive money. All purchase orders or contracts, as defined in this division, which shall involve amounts of \$15,000.00 or less, shall be let in the manner described above whenever practicable, except that they may be let in the open market in a manner calculated to insure the best interests of the public, after solicitation of bids by mail, telephone, facsimile, e-mail, or otherwise.

(b) Concessions at the Des Moines International Airport shall be procured pursuant to a competitive solicitation, but may be awarded to a bidder other than a bidder making the highest dollar bid. In competitive solicitations for Airport concessions, selection criteria other than compensation to the City may be considered, including but not limited to capital

investment, experience, financial resources, business plan, and involvement of Disadvantaged Business Enterprises.

(c) For purposes of subsection (b) above, the term concession shall not include aeronautical functions, as defined in Federal Aviation Administration regulations, or the lease of property or space at the Airport to companies where the leased property or space is not used for direct sales to the public or for direct provision of services to the public.

## **2-725. CONTRACTS EXEMPT FROM BIDDING.**

(a) The following shall not be subject to the competitive bidding requirements of this division:

(1) Contracts which by their nature are not adapted to award by competitive bidding, including but not limited to contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part, and contracts for the disposal of special or hazardous waste materials, where the charge for services cannot be calculated until an analysis of the waste is completed.

(2) Contracts for printing or engraving of bonds, official statements and other evidences of indebtedness.

(3) Contracts for printing or procurement of special materials, supplies, or postage to be used in connection with an election or referendum.

(4) Contracts for utility services; contracts for the purchase of magazines, books, periodicals, and similar articles of an educational or instructional nature.

(5) Contracts for the binding of such magazines, books, periodicals, pamphlets, and similar articles.

(6) Contracts for the repair of equipment and machinery or for repair parts, when required repair parts are available only from a single factory source and are sold through a single area-wide distributor, and competitive bids for such repairs are thus not prospectively obtainable, and the city manager or his or her designee so finds and declares in writing. The city manager's or

his or her designee's written determination shall be filed with the purchase documents in each such instance.

(7) Contracts for the purchase of goods or services that are of such a nature that they are the only goods or services which will fit and comply with the required use, or are an integral part of a total system so as to be uniquely compatible with existing city needs, materials or equipment to be cost effective, and the city manager or his or her designee so finds and declares in writing. The city manager's or his or her designee's written determination shall be filed with the purchase documents in each such instance.

(8) Contracts for the purchase of goods or services through which non profit associations, established to aid or assist governmental bodies or other governmental agencies have secured special rates or provisions for the purchase of goods or services for the benefit of governmental bodies or agencies.

(9) Contracts for goods or services procured through a cooperative chapter 28E agreement that were procured by a governmental entity participating in said 28E agreement, provided that the city manager or his or her designee determines that said entity procured the goods or services pursuant to competitive procurement procedures substantially equivalent to those set forth in this division.

(b) The purchasing agent is expressly authorized to procure from any federal, state, or local government unit or agency thereof surplus machinery, motor vehicles, materials, supplies, commodities, or equipment as may be made available through the operation of any legislation heretofore or hereafter enacted without conforming to the competitive bidding requirements of this division.

(c) The purchasing agent is also expressly authorized to procure machinery, motor vehicles, materials, supplies, commodities, equipment or services from contracts established by the State of Iowa Department of General Services or Department of Transportation pursuant to procedures established by I.C. ch. 18 and rules and regulations promulgated thereunder, without conforming to the competitive bidding requirements of this subdivision.

(d) Regular or temporary employment contracts or hiring in the municipal service, whether with respect to the classified service or otherwise, shall not be subject to this subdivision nor shall this division be applicable to the granting or issuance, pursuant to powers conferred by laws, ordinances, or resolutions, of franchises, licenses, permits or other authorizations by the corporate authorities of the city, nor to contracts or transactions, other than the sale or lease of personal property, pursuant to which the city is the recipient of money.

(e) The purchasing agent is hereby expressly authorized to procure from any federal, state, or local government unit or agency thereof, without conforming to the competitive bidding requirements of this division, such machinery, motor vehicles, materials, supplies, commodities, equipment or services as are authorized by the city manager, provided that the city manager or his or her designee determines and declares in writing that such machinery, motor vehicles, materials, supplies, commodities, equipment or services were competitively procured by such unit or agency pursuant to competitive procurement procedures substantially equivalent to those set forth in this division, and can be purchased without mark-up from such other federal, state, or local government unit or agency.

## **2-729. ADVERTISEMENT FOR BIDS.**

(a) All proposals to award purchase orders or contracts involving amounts in excess of \$15,000.00 shall be published by the purchasing agent at least seven days, excluding Sundays and legal holidays, in advance of the date announced for receiving bids, in a secular English language daily newspaper of general circulation throughout the city, except the city council may waive publication in times of emergency or public damages.

(b) Such proposals to award purchase orders or contracts shall simultaneously be posted on readily accessible bulletin boards in the office of the purchasing agent.

(c) Nothing contained in this section shall be construed to prohibit the purchasing agent from promulgating additional announcements in recognized trade journals, on the city cable television channel, on the city's internet website, on other appropriate websites, or by other electronic media.

(d) Advertisements for bids shall describe the character of the proposed contract or agreement in sufficient detail to enable the bidders thereon to know what their obligations will be, either in the advertisement itself or by reference to detailed plans and specifications on file in the office of the purchasing agent at the time of the publication of the first announcement. This advertisement shall also state the date, time and place assigned for the opening of bids, and no bids shall be received at any time subsequent to the time indicated in the announcement.

(e) A certified check payable to the city and drawn on a state bank as a deposit of good faith in a reasonable amount but not in excess of ten percent of the contract amount may be required of each bidder by the purchasing agent on all bids involving amounts in excess of \$15,000.00 and, if required, the advertisement for bids shall so specify.

(f) Subject to the direction and supervision of the city manager, or his or her designee, only the purchasing agent is authorized to advertise for bids or submit requests for proposals when a purchase order is to be used.

## **2-732. AWARD OF CONTRACTS.**

(a) No purchase orders; no contracts of whatever nature for independent contractors' services or work; any purchase, lease or sale of personal property, materials, equipment or supplies; or the granting of any concession involving amounts between \$1000.00 to \$25,000, when a purchase order is to be used, shall be awarded unless the same is authorized by the city manager or his or her designee.

(b) No purchase orders; no contracts of whatever nature for independent contractors' services or work; any purchase, lease or sale of personal property, materials, equipment or supplies; or the granting of any concession involving amounts in excess of \$25,000.00, shall be awarded unless the same is authorized by the city council.

(c) All bids above \$1000.00 with the name of the bidder shall be entered on a record maintained by the purchasing agent, which record with the names of the successful bidders indicated thereon shall, after award of contract or order, be open to public inspection in the office of the purchasing agent.

**2-735. REJECTION OF BIDS.**

Any and all bids received in response to an advertisement may be rejected by the city manager or his or her designee if the bidder is not deemed responsible or the character or quality of the services, supplies, materials or equipment does not conform to requirements or if the specifications or requirements submitted by the city to the bidder are determined to be faulty or incorrect or if the public interest may otherwise be served thereby. If the lowest bid after formal advertisement is rejected because it is not the lowest responsible bid, the person or body rejecting it shall immediately state in writing the precise reasons for rejection and file the same in the office of the purchasing agent.

**2-736. PERFORMANCE BOND.**

Bond, with good and sufficient sureties, in an amount deemed adequate, not only to insure performance of the contract in the time and manner prescribed in the contract, but also to save, indemnify, and keep harmless the city against all loss, damages, claims, liabilities, judgments, costs, and expenses which may in any way accrue against the city in consequence of the granting of the contract or which may in any way result therefrom may be required of each bidder upon contracts involving amounts in excess of \$5,000.00 when, in the opinion of the city manager or his or her designee, the public interest will be served thereby.  
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Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Terrence L. Timmins, Deputy City Attorney

Preston Daniels, Mayor

Attest:

I, Donna Boetel-Baker, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 00-3354), passed by the City Council of said City at a meeting held August 7, 2000, signed by the Mayor on August 7, 2000, and published as provided by law in the Business Record on August 21, 2000. Authorized by Publication Order No.2011.

Donna Boetel-Baker, CMC/AAE, City Clerk