

ORDINANCE NO. 14,346

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by repealing Subdivision V, Purchasing Division of Chapter 2, Administration, Sections 2-716 through 2-740 and adding and enacting a new Subdivision V - Procurement Division of Chapter 2, Administration, Sections 2-700 through 2-763, relating to general provisions, procurement by solicitation of competitive bids and procurement by request for proposals.

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, adopted by Ordinance No. 13,827, passed June 5, 2000, is hereby amended by repealing Subdivision V, Purchasing Division of Chapter 2, Administration, Sections 2-716 through 2-740 and adding and enacting a new Subdivision V - Procurement Division of Chapter 2, Administration, Sections 2-700 through 2-763, relating to general provisions, procurement by solicitation of competitive bids and procurement by request for proposals, as follows:

**Chapter 2. Administration**  
**Article V. Departments**  
**Division 3. Finance**  
**Subdivision V. Procurement Division**

**Part 1. General Provisions**

- Sec. 2-700. Duty of city manager.
- Sec. 2-701. Supervision.
- Sec. 2-702. Responsibility for procurement of goods and services.
- Sec. 2-703. Definitions.
- Sec. 2-704. Preference for state products and labor.

Sec. 2-705. Preference for local goods and services.  
Sec. 2-706. Determination of eligibility for local preference.  
Sec. 2-707. Collusion among bidders or proposers prohibited.  
Sec. 2-708. City manager authorized to adopt administrative rules, regulations and procedures implementing the provisions of this subdivision.  
Sec. 2-709. Public and operating emergencies.  
Sec. 2-710. City council and city manager may exempt contracts from the provisions of this subdivision; city manager may exempt contracts from administrative rules, regulations and procedures.  
Sec. 2-711. Other duties of procurement administrator.  
Sec. 2-712. Retention of procurement records; procurement records open to public examination.  
Sec. 2-713. Conflict of interest in city procurements prohibited.  
Sec. 2-714. Procurement by brand or trade name prohibited; exceptions.  
Sec. 2-715. Rule of construction.  
Secs. 2-716--2-725. Reserved.

## **Part 2. Procurement by Solicitation of Competitive Bids**

Sec. 2-726. Procurement of goods and services under competitive bidding process; Exceptions.  
Sec. 2-727. Competitive bidding and advertisement.  
Sec. 2-728. Annual purchase agreements and contracts for demolition and repair services.  
Sec. 2-729. Procurement Requests.  
Sec. 2-730. Advertisement for bids.  
Sec. 2-731. Opening and public inspection of bids.  
Sec. 2-732. Determining responsibility of bidders.  
Sec. 2-733. Rejection of bids.  
Sec. 2-734. Appeal of procurement administrator's determination regarding best bid or rejection of bid.  
Sec. 2-735. Bond, indemnity and insurance.  
Sec. 2-736. Authority to issue purchase orders and to approve and execute contracts for goods and/or services or concession agreements procured by competitive bid; authority to issue change orders to purchase orders and to execute amendments to procurement contracts and concession agreements.  
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Sec. 2-738. Assignment of contract prohibited.  
Secs. 2-739--2-745. Reserved.

## **Part 3 - Procurement by Request for Proposals**

Sec. 2-746. Procurement of goods, services and concessions subject to request of proposals (RFP) process; Exceptions.

Sec. 2-747. Bond, indemnity and insurance.

Sec. 2-748. Preparation of RFPs; review and approval of RFPs prior to issuance.

Sec. 2-749. Contacts with potential proposers prior to issuance of RFP limited to proposer's conference; consultant participating in RFP formation prohibited from responding to RFP.

Sec. 2-750. Issuance and publication of RFPs.

Sec. 2-751. Procurement administrator the sole point of contact for proposer questions, objections or requests for information, clarification or interpretation; proposers prohibited from inappropriate communication with city officials or employees; inappropriate communication may result in rejection or return of proposals; inappropriate communication may be considered in evaluation of proposals.

Sec. 2-752. Proposers Conference.

Sec. 2-753. City's Response to Proposer Questions, Objections, and Requests for Clarification or Interpretation; Issuance of Addenda to RFP.

Sec. 2-754. Submission and opening of proposals.

Sec. 2-755. Evaluation and selection committee; procedure for evaluation and recommendation as to selection of best proposal; submission of recommendation to city council.

Sec. 2-756. Appeal of evaluation and selection committee recommendation; proposer objections to be submitted in writing; hearing by city manager or hearing officer; resolution of proposer objections; city council consideration of appeal report and of the appealing proposer's objections.

Sec. 2-757. Alternative appeal procedure - direct appeal to city council.

Sec. 2-758. Rejection of proposals.

Sec. 2-759. City council selection of best proposal; notification of successful proposer.

Sec. 2-760. Authority to execute procurement contracts and concession agreements and to issue purchase orders for goods and/or services or concessions procured by request for proposals; authority to execute amendments to contracts and agreements and to issue change orders to purchase orders.

Sec. 2-761. Term of contract; renewal of contract.

Sec. 2-762. Assignment of contract prohibited.

Secs. 2-763-- 2-765. Reserved.

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**Part 1. General Provisions**

**Sec. 2-700. Duty of city manager.**

In accordance with and to the extent provided by Section 372.8 of the Iowa Code or successor provision, the city manager has charge of the procurement of goods and/or services for use in the city service and the disposition of surplus city property.

**Sec. 2-701. Supervision.**

The director of finance shall, under the direction and supervision of the city manager, supervise the procurement division in the department of finance.

**Sec. 2-702. Responsibility for the procurement of goods and services.**

The procurement administrator is responsible for the activities of the procurement division under the direction and supervision of the director of finance. The procurement of goods and/or services for use in the city service and the disposition of surplus city property shall be conducted by the procurement division, with the following exceptions. The procurement of contracts for construction of public improvements included in the capital improvements program and the procurement of contracts for professional engineering or architectural services necessary for the implementation and construction of public improvements included in the capital improvements program shall be conducted in accordance with state law under the direction of the city manager and city engineer, provided that the city manager shall be authorized to award such contracts when the cost will not exceed \$25,000, and the city council shall award and authorize execution of such contracts in excess of \$25,000. The procurement of legal services pursuant to professional service agreements with attorneys or law firms shall be conducted under the direction of the city attorney, provided that the procurement of legal services shall be subject to the approval of the city council as provided in section 2-364 of this City Code.

**Sec. 2-703. Definitions.**

The definitions in this section apply to this subdivision. Defined terms remain defined terms whether or not capitalized in the text. The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in

this section, except where the context clearly indicates a different meaning:

**Bidder** means a provider of goods and/or services who submits a bid proposing to provide specified goods and/or services at a specified price or prices in response to a solicitation for bids for the provision of those goods and/or services issued by the city purchasing division or by a city department authorized to issue such solicitation.

**Concession** means the grant of the right to operate a for-profit venture on designated city property for the direct sale or advertising of goods and/or services to the public, where the designated property is considered to be a point of attraction for the public, and where competition for the grant of such use of such property for the sale of goods and/or services is anticipated. Aeronautical functions, as defined in Federal Aviation Administration regulations, are not included in the definition of concessions. Uses which are customarily granted as concessions include, but are not limited to, the sale of food and beverages at city park and recreation facilities, in common areas in city parking garages, and in city airport facilities where the traveling public will congregate, and the lease of vehicles to the traveling public in the baggage claim area at city airport facilities. Uses which will not be granted as concessions include food and beverage sales and vending in employee break areas in city buildings used primarily for city offices.

**Formal competitive bidding procedure** means the solicitation of bids by mailing and advertisement as provided by Section 2-731, and the submission of sealed written bids to be publicly opened at an announced time and place.

**Goods** means things that are movable and have intrinsic value, including without limitation, equipment, materials, supplies, computer programs, and intellectual property and excluding real property, money, securities, documents, negotiable instruments and other intangibles.

**Informal competitive bidding procedure** means the solicitation and submission of bids by telephone, facsimile, e-mail or regular mail.

**Nonprofit agency or organization** means an agency or organization that is incorporated under I.C. ch. 504A or is tax exempt under section 501(c) of the Internal Revenue Code.

**Purchase order** means a written document generated by the procurement division addressed to a provider of goods and/or services stating the terms and conditions of a proposed transaction. In the absence of a formal contract entered into between the provider and the city, a purchase order which is accepted and acted upon by the provider constitutes the

formation of a contract between the provider and the city.

**Proposer** means a provider of goods and/or services who submits a proposal to provide specified goods and/or services at a specified price or prices in response to a request for proposals for the provision of those goods and/or services issued by the city purchasing division or by a city department authorized to issue such request for proposals.

**Services** means useful labor, such as repair or maintenance work, or work that results in the creation of intellectual property, including without limitation architectural or engineering designs, but does not result in the production a tangible commodity or item of personal property.

**Surplus property** means those goods or personal property of the city which is in excess of current city needs, or is no longer required for its originally intended use, purpose or function, as determined by the procurement administrator.

**Temporary concession** means a concession as defined in this subsection that is conducted for no more than 31 consecutive days or for no more than 60 days within a calendar year.

#### **Sec. 2-704. Preference for state products and labor.**

The requirement of I.C. § 73.1 et seq. relating to preference for state products and labor shall be observed by all city officers and employees with respect to the procurement or use of products and provisions grown and coal produced within the state.

#### **Sec. 2-705. Preference for local goods and services.**

In recognition that businesses may pay higher property taxes due to their location within the corporate limits and that such taxes may increase the cost of providing goods and/or services in comparison to businesses located outside the corporate limits and to encourage businesses to locate and remain in the city, a preference shall be given to local businesses in the issuance of purchase orders or the awarding of city contracts governed by this subdivision. In conducting the procurement of goods and/or services by competitive bid, the procurement administrator shall give preference to a responsive bid from a business located within the corporate limits of the city over an acceptable low bid submitted by a business located outside of the corporate limits, where the local bidder's bid exceeds the acceptable low bid by no more than one percent. In conducting the procurement of goods and/or services by request for proposals, a local

preference equivalent to one percent of all points available to competing proposers under the evaluation criteria adopted for each procurement shall be awarded to each proposer whose business is located within the corporate limits of the city. The local preference herein established shall not be applicable to goods and/or services procured with the assistance of federal, state or county grants or funds, nor shall such preference be applied in violation of any international trade agreement or treaty to which the United States of America is a party.

**Sec. 2-706. Determination of eligibility for local preference.**

For purposes of determining if a business is entitled to a local preference, the business shall be considered to be local if it is determined to be within the corporate limits of the city by the physical and economic relationship to the city, determined by the payment of city property taxes on a plant or office occupied by the business for a period of at least one year prior to award, or by the payment of rent to a landlord paying city property taxes on a plant or office occupied by the business for a period of at least one year prior to award.

**Sec. 2-707. Collusion among bidders or proposers prohibited.**

Under this subdivision, any agreement or collusion among bidders or prospective bidders, or among proposers or prospective proposers, in restraint of freedom of competition by agreement to bid or propose a fixed price or otherwise shall render the bids or proposals of such bidders or proposers void. Each bidder/proposer shall accompany his or her bid/proposal with a sworn statement or shall otherwise swear or affirm that he or she has not been a party to any such agreement. Any disclosure by one bidder or proposer to another bidder or proposer of the content of a bid or proposal in advance or the submission of bids or proposals shall render the bids or proposals of both such bidders or proposers void, and may at the discretion of the procurement administrator render the proceedings void.

**Sec. 2-708. City manager authorized to adopt administrative rules, regulations and procedures implementing the provisions of this subdivision and to execute contract not to exceed \$25,000.**

The city manager may in his or her discretion adopt, promulgate and revise administrative rules, regulations and procedures to implement the provisions of this subdivision and for the proper conduct of the procurement activities of the procurement division. The city manager may execute contracts to

procure goods and/or services where the estimated cost or revenue will not exceed \$25,000 annually and may authorize department directors to execute such contracts.

**Sec. 2-709. Public and operating emergencies.**

- (a) The mayor may, upon declaration of emergency by proclamation as provided in section 2-168 of this chapter, authorize the city manager to procure by purchase or lease such goods and/or services as are deemed necessary for the city's emergency response effort. Such emergency procurement of goods and/or services may be made in the open market without filing a requisition, purchase order, request for proposals or estimate therefor, and without advertisement therefor, for immediate delivery or furnishing. A full written account of all emergency procurements made during such emergency, together with a requisition for the goods and/or services required therefor, shall be submitted to or provided by the city manager within 30 days after their procurement and shall be open to public inspection for a period of at least one year subsequent to the date of the emergency purchases. The city manager shall, within three months of the conclusion of such emergency, formally communicate the emergency expenditures in a full written account to the city council.
- (b) In the event of an operating emergency as determined by the city manager, the city manager may procure or may authorize in writing the procurement administrator or any department or any board or commission of the city to procure, in the open market without filing a requisition, purchase order, request for proposals or estimate therefor and without advertisement, any goods and/or services that could not have been reasonably foreseen or anticipated, for immediate delivery or furnishing to meet such operating emergency. A full written account of any such operating emergency, together with a requisition for the goods or services required therefor, shall be submitted immediately to the city manager and shall be open to public inspection for a period of at least one year subsequent to the date of the emergency purchases. If the amount so expended for such operating emergency exceeds \$25,000, the city manager, at the next immediate council meeting, shall formally communicate the emergency expenditure in a full written account to the city council. This exercise of the authority invested in the city manager in respect to purchases to meet such bona fide operating emergencies shall not be dependent upon the mayor governing the city by



proclamation.

- (c) In the event of an operating exigency as determined by the city manager, the city manager may temporarily extend any contract for the provision of goods and/or services to the city, provided that the city manager shall determine and report such to the city council. If the city council does not concur that the continued provision of such goods and/or services to the city by the current provider is vital to the city's interests and that the procurement of a new contract for the provision of such goods and/or services by competitive bid or request for proposals is impractical within the time remaining under the current contract, such contract shall be terminated within the time required by the city council.

**Sec. 2-710. City council and city manager may exempt contracts from the provisions of this subdivision; city manager may exempt contracts from administrative rules, regulations and procedures.**

- (a) The city council may on a case by case basis, upon the recommendation of the city manager for good cause shown, exempt contracts for the provision of goods and/or services from the competitive procurement requirements of this subdivision, or waive the formal competitive bidding procedure and authorize use of informal competitive bidding procedure for the procurement of goods and/or services to cost in excess of \$25,000.
- (b) The city council may on a case by case basis, upon the recommendation of the city manager for good cause shown, exempt contracts for the provision of goods and/or services from the request for proposals process of this subdivision or waive the request for proposals process and authorize the negotiation of a contract for the procurement of goods and/or services estimated to cost in excess of \$25,000.
- (c) The city manager may, upon good cause shown, exempt contracts for the provision of goods and/or services from the administrative rules, regulations and procedures adopted by the city manager.
- (d) The city manager may, upon the recommendation of the requesting department for good cause shown, waive the formal competitive bidding procedure and authorize use of informal competitive bidding procedures for the procurement of goods and/or services estimated to cost \$25,000 or less.
- (e) The city manager may, upon the recommendation of the requesting department for good cause shown, waive the request for proposals process and authorize the negotiation of a contract for the procurement of goods and/or services

for the procurement of goods and/or services estimated to cost \$25,000 or less.

**Sec. 2-711. Other duties of procurement administrator.**

The procurement administrator, subject to the direction and approval of the city manager, shall:

- (1) Assist in the preparation of bid specifications by city departments; coordinate the issuance and advertisement of requests for competitive sealed bids; and assist with the informal competitive bidding procedures.
- (2) Open all sealed bids under the general supervision of the city manager.
- (3) Furnish his or her recommendations upon request of the city manager as to which bidder is the lowest or highest responsible bidder, as the case may be.
- (4) Conduct or require such physical, chemical or other tests as may be necessary to ensure conformity to such specifications with respect to quality of goods and/or services procured by the city.
- (5) Review requests for proposals prepared by city departments for conformity with city requirements and coordinate their issuance and advertisement.
- (6) Review proposals received in response to requests for proposals, coordinate their evaluation by the evaluation and selection committee, and coordinate the making of a recommendation thereon by the evaluation and selection committee.
- (7) Distribute or cause to be distributed to the various requisitioning departments such goods as may be procured.
- (8) Transfer goods to or between the various requisitioning department
- (9) Dispose of surplus property by transfer between departments, by competitive sale, or by advertisement to the public.
- (10) Control and maintain adequate inventory records of all stock of goods, contained in any storage place under control of the procurement administrator.
- (11) Assist in the adoption, promulgation and revision of administrative rules, regulations and procedures for the proper conduct of the procurement activities of the procurement division.
- (12) Undertake any related activities which may be assigned to him or her from time to time by the finance director, city manager or the city council.
- (13) Submit reports, as required by the city manager, faithfully describing the activities of the office.

**Sec. 2-712. Retention of procurement records; procurement records open to public examination.**

On all procurements involving expenditures of \$1,000 or more, and for which a purchase order is required pursuant to administrative policy, the purchase order and other records related to said purchase, including any contract entered into pursuant thereto, shall be retained in the office of the procurement administrator in a file open to public examination. Such records shall be retained for the period of time during which a cause of action could be initiated on the purchase order or contract under the applicable statute of limitations. After such period has elapsed, such purchase orders, contracts, attachments and related records may be destroyed.

**Sec. 2-713. Conflict of interest in city procurements prohibited.**

- (a) No employee, officer or agent of the city shall participate in selection or in the award or administration of a contract or purchase order for the procurement of goods and/or services if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firm or contractor selected for award:
  - (1) The employee, officer or agent;
  - (2) Any member of his or her immediate family;
  - (3) His or her partner; or
  - (4) An organization which employs or is about to employ any of the persons listed in subsections (a)(1) through (3) of this section.
- (b) The city's officers, employees or agents will neither solicit nor accept gratuities, favors, money, rebates or anything of monetary value from persons from whom the city purchases or procures goods and/or services. Any employee, officer or agent who violates this section may be subject to appropriate disciplinary action.
- (c) This section is in addition to the conflict of interest prohibitions found in sections 2-423, 2-1054 and 94-3.
- (d) Exceptions under federal law. To the extent allowed by applicable federal law or regulation, the city council may permit exceptions to conflicts of interest under this section which do not constitute a violation of applicable provisions of state law. The grant of such exceptions shall be specifically conditioned upon approval by the appropriate federal agency.

**Sec. 2-714. Procurement by brand or trade name prohibited; exceptions.**

All requests made for bids and proposals for goods shall be made in general terms and by general specifications and not by brand or trade name, provided that the procurement administrator may, upon good cause shown, allow procurement of goods by brand or trade name when such goods are being used for test purposes or to determine level of quality.

**Sec. 2-715. Rule of construction.**

Whenever used in this subdivision, the terms "city manager", "procurement administrator", "finance director" and "department director" shall mean and include the designees of such persons, or the persons authorized to act in the capacity of such persons in their absence.

**Part 2. Procurement by Solicitation of Competitive Bids**

**Sec. 2-726. Procurement of goods and services under competitive bidding process; Exceptions.**

- (a) The procurement of goods and/or services, wherein cost to the city and compliance with specifications will be the only criteria considered in selecting among competing bidders, shall be accomplished under the competitive bidding process outlined in this part, with the following exceptions:
- (1) The procurement of services 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) The procurement of printing or engraving of bonds, official statements and other evidences of indebtedness.
  - (3) The procurement of printing or procurement of special materials, supplies, or postage to be used in connection with an election or referendum.
  - (4) The procurement of utility services.
  - (5) The procurement of magazines, books, periodicals, and similar articles of an educational or instructional

nature, and the binding of such magazines, books, periodicals, pamphlets, and similar articles.

- (6) The procurement of repair services for equipment and machinery, or for the procurement of 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 written determination shall be filed with the procurement documents in each such instance.
- (7) The procurement of goods and/or services that are of such a nature that they are the only goods and/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 so finds and declares in writing. The city manager's written determination shall be filed with the procurement documents in each such instance.
- (8) Contracts for the procurement of goods and/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 and/or services for the benefit of governmental bodies or agencies.
- (9) Contracts for goods and/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 determines that said entity procured the goods and/or services pursuant to competitive procurement procedures substantially equivalent to those set forth in this division.
- (10) The procurement of goods and/or services by a department from a particular vendor, involving a city expenditure of less than \$1,000, under rules developed by the procurement administrator.
- (11) The procurement of sponsorship services which provide funding and/or promotion, marketing or assistance with the implementation of events, services or programs undertaken by the park and recreation department.
- (12) The sale of advertising under guidelines approved by the procurement administrator.
- (13) The procurement of entertainers or performing artists for civic programs and events, when the availability

of such person does not lend itself to competitive procurement.

- (14) A nonprofit agency or organization need not complete the competitive procurement process but must obtain written permission from the city manager to sell consumer goods and/or services to its members or the public on city property.
  - (15) A temporary concession may be granted through a written agreement approved by the city manager, or the director of the procuring department if authorized by the city manager, without completing the competitive procurement process.
  - (16) Concessions involving the lease or exclusive use of city property for a period of more than three years shall be subject to approval of the city council, as provided by Section 364.7 of the Iowa Code.
- (b) The procurement administrator 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 procurement administrator is also expressly authorized to procure goods and/ or services from supply schedules of the U.S. General Services Administration and from contracts established by the State of Iowa Department of General Services, the Iowa Department of Transportation, or the Iowa Communications Network 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.
  - (e) The procurement administrator 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 goods and/or services as are authorized by the city manager, provided that the city manager determines and declares in writing that such goods and/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 procured without mark-up from such other federal, state, or local

government unit or agency.

- (f) The procurement administrator is hereby expressly authorized to procure goods and/or services from contracts that have been competitively established through the Western States Contracting Alliance and other cooperative group contracting consortiums for state government departments, institutions, agencies and political subdivisions, without conforming to the competitive bidding requirements of this division.

**Sec. 2-727. Competitive bidding and advertisement.**

- (a) Except as otherwise provided, all purchase orders issued by the procurement division, and all contracts of whatever nature, made by or on behalf of the city, for the procurement of goods and/or services, whether by purchase, lease, or a concession agreement, where the estimated cost or revenue to the city will exceed \$25,000.00 annually, and where the selection criteria include only the lowest or highest bid and compliance with bid specifications, shall be let pursuant to the formal competitive bidding procedure, after advertisement as provided by section 2-731, to the lowest responsible bidder or, in the appropriate instance, to the highest responsible bidder, depending upon whether the city is to expend or receive money.
- (b) All purchase orders issued by the procurement division, and all contracts of whatever nature, made by or on behalf of the city, for the procurement of goods and/or services, whether by purchase, lease, or a concession agreement, where the estimated cost or revenue to the city will not exceed \$25,000.00 annually, and where the selection criteria include only the lowest or highest bid and compliance with bid specifications, shall be let pursuant to the formal competitive bidding procedure, after advertisement as provided by section 2-730, to the lowest responsible bidder or, in the appropriate instance, to the highest responsible bidder, depending upon whether the city is to expend or receive money, unless the procurement administrator determines that the informal competitive bidding procedure is appropriate.
- (c) All surplus property deemed suitable and appropriate for sale by the procurement administrator, where the estimated sale price of any single item of surplus property, or the estimated aggregate sale price of all items of surplus property to be sold in one lot, will exceed \$25,000.00,

shall be sold pursuant to the formal competitive bidding procedure, after advertisement as provided by section 2-730, or at auction. All such sales in excess of \$25,000.00 must be approved by the city council.

- (d) All surplus property deemed suitable and appropriate for sale by the procurement administrator, where the estimated sale price of any single item of surplus property, or the estimated aggregate sale price of all items of surplus property to be sold in one lot, will not exceed \$25,000.00, may be sold pursuant to the formal competitive bidding procedure after advertisement as provided by section 2-730, unless the procurement administrator determines that the informal competitive bidding procedure or sale by advertisement is appropriate.
  
- (e) The procurement administrator may dispose of surplus property not deemed suitable or appropriate for sale by such means as the procurement administrator deems appropriate.

**Sec. 2-728. Annual purchase agreements and contracts for demolition and repair services.**

- (a) The procurement administrator is authorized to enter into annual purchase agreements for the procurement of goods and/or services that are consistently needed by city departments, but where the type or quantity of goods and/or services are unknown and where a purchase agreement for a fixed amount is not reasonable or cost efficient. Competitive bidding procedures shall be followed in entering into the annual purchase agreement. Such annual purchase agreements shall state that the city manager may purchase necessary goods and/or services with the successful bidder for those particular goods and/or services at the determined price as needed by the city. Annual purchase agreements where the estimated cost exceeds \$25,000.00 must be approved by the city council. Annual purchase agreements where the estimated cost will not exceed \$25,000.00 may be approved by the procurement administrator. Annual purchase agreements shall be negotiated or rebid annually, unless renewed as provided in the purchase agreement.
  
- (b) The city manager is hereby expressly authorized to enter into annual demolition contracts for the demolition of commercial and residential structures, where the estimated cost to demolish any single structure does not exceed



\$50,000.00. The city manager shall procure such contracts by mailing and publishing annually, on or before April 1st of each year, a solicitation for annual demolition contracts, which solicitation shall be mailed to all demolition contractors providing such service to the city within the last year, and shall be published once in a newspaper of general circulation in the county, which mailing and publication shall occur not less than five business days prior to the required response date. The city manager may solicit separate contracts for "demolition - structure removal" and for "demolition - asbestos removal". In responding to such solicitation, demolition contractors shall be required to execute a blanket form of demolition contract in the form approved by the city manager and the legal department, shall be required to submit a certificate of insurance evidencing the coverages and endorsements required by the city, and shall be required to submit a performance, payment and maintenance bond on the form provided, and in the amount required, by the city. If two or more demolition contractors respond to such solicitation and submit executed contracts, insurance certificates, and performance, payment and maintenance bonds as above provided, the city manager may execute such contracts on behalf of the city. Upon execution of such contracts, the city manager may, upon the direction of the city council and as needed, obtain competitive proposals from said contractors for the demolition of residential or commercial structures within the city, and may enter into a contract addendum for the demolition of a particular structure or structures with a responsible contractor submitting the lowest responsive proposal therefor, provided that the proposed cost of any single structure demolition does not exceed \$50,000.00. If the cost of demolishing any single residential or commercial structure will exceed \$50,000.00, the engineering department shall procure competitive bids therefore for award by the city council pursuant to chapter 384, division VI, the contract letting procedure for public improvement projects.

- (c) The city manager is hereby expressly authorized to enter into annual rehabilitation and/or repair contracts for the repair and/or renovation of city-owned municipal housing agency units, where the cost to repair and/or renovate any single unit does not exceed \$25,000.00. The city manager shall procure such contracts by mailing and publishing annually, on or before April 1st of each year, a solicitation for annual repair and/or renovation contracts, which solicitation shall be mailed to all contractors

providing such service to the city within the last year, and shall be published once in a newspaper of general circulation in the county, which mailing and publication shall occur not less than five business days prior to the required response date. In responding to such solicitation, contractors shall be required to execute a blanket form of agreement in form approved by the city manager and the legal department, shall be required to submit a certificate of insurance evidencing the coverages and endorsements required by the city, and shall be required to submit a performance and maintenance bond on the form provided, and in the amount required, by the city. If two or more contractors respond to such solicitation and submit executed contracts, insurance certificates and performance and maintenance bonds as provided above, the city manager may execute such contracts on behalf of the city. Upon execution of such contracts, the city manager may, as needed, obtain competitive proposals from said contractors for the repair and/or renovation of city-owned municipal housing agency units and may enter into a contract addendum for the repair and/or renovation of a particular unit or units with a responsible contractor submitting the lowest, responsive proposal therefor, provided that the proposed cost of repairing and/or renovating any single unit does not exceed \$25,000.00. If the cost of repairing and/or renovating any single unit will exceed \$25,000.00 the city manager shall procure competitive bids therefor for award by the city.

**Sec. 2-729. Procurement requests.**

- (a) The director of each department of the city shall give written notice to the finance director, identifying the officers or employees of the department who shall be authorized to approve requests for procurement of goods and/or services for the respective departments, boards or commissions.
- (b) Except as to emergency contracts authorized by section 2-709 of this subdivision, no procurement request shall be split into parts for the purpose of avoiding any section of this subdivision.

**Sec. 2-730. Advertisement for bids.**

- (a) All proposals to award purchase orders or contracts where the estimated cost or revenue to the city will exceed \$25,000.00 shall be published by the procurement

- administrator in a secular English language daily newspaper of general circulation throughout the city at least seven days in advance of the date announced for receiving bids,, excluding Sundays and legal holidays, except the city council may waive publication in times of public emergency.
- (b) Such proposals to award purchase orders or contracts shall simultaneously be posted on readily accessible bulletin boards in the office of the procurement administrator.
  - (c) Nothing contained in this section shall be construed to prohibit the procurement administrator from promulgating additional announcements in recognized trade journals, on the city cable television channel, on the city's internet website, on other appropriate websites, by other electronic media, or by mailing announcements to potential bidders.
  - (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 procurement administrator 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 procurement administrator on all bids involving amounts in excess of \$25,000.00 and, if required, the advertisement for bids shall so specify.
  - (f) Subject to the direction and supervision of the city manager only the procurement administrator is authorized to advertise for bids or issue requests for proposals when a purchase order is to be used.

**Sec. 2-731. Opening and public inspection of bids.**

All sealed bids made pursuant to this subdivision shall be publicly opened by the city manager or his or her designee at such time and place as shall be specified in the advertisement or invitation for bids, and all such bids shall be available for a reasonable time to public inspection in the office of the procurement administrator.

**Sec. 2-732. Determining responsibility of bidders.**

In determining responsibility of bidders pursuant to this

subdivision, the procurement administrator may take into account, in addition to financial responsibility, the past record of transactions and experience with the bidder, adequacy of the bidder's equipment, and his or her ability to complete performance within the specified time limit.

**Sec. 2-733. Rejection of bids.**

Any and all bids received in response to an advertisement may be rejected by the procurement administrator if the bidder is not deemed responsible; or the character or quality of the goods and/or services 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 received, pursuant to the formal competitive bidding procedure, or in the appropriate instance the highest bid received, depending upon whether the city is to expend or receive money, is rejected because it is not the most 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 procurement administrator.

**Sec. 2-734. Appeal of procurement administrator's determination regarding best bid or rejection of bid.**

- (a) Any bidder or potential bidder who believes that the terms of a bid request are objectionable, or who believes that the procurement administrator or other city staff have not appropriately responded to its questions, objections, or requests for information, clarification or interpretation regarding a bid request, or who believes that the procurement administrator or other city staff have a bias against it or are treating it unfairly, may communicate its concerns in that regard to the city manager or the city council. A bidder or potential bidder who wishes to raise such an issue with the city manager or city council shall first communicate its concerns directly to the city manager, orally or in writing. If the city manager cannot resolve the issue to the satisfaction of the bidder or potential bidder, the city manager shall, at the request of the bidder or potential bidder, forward such concerns to the city council for its consideration.
- (b) A bidder who is aggrieved by the procurement administrator's determination as to which is the lowest compliant bid, or as to the determination to reject a bid,

may appeal such determination pursuant to the administrative appeal process established by the procurement division.

**Sec. 2-735. Performance bond, indemnity and insurance.**

- (a) When deemed to be in the public interest by the procurement administrator, bidders may be required to submit a bond, with good and sufficient sureties, in an amount deemed adequate to assure performance of the contract in the time and manner prescribed in the contract, to secure the payment of the bidder's subcontractors and suppliers, and to assure maintenance of the goods.
- (b) Bidders shall be required to execute an indemnity in favor of the city, agreeing 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 awarding the contract or which may in any way result from the bidder's performance thereof.
- (c) When deemed to be in the public interest by the city's risk manager, bidders may be required to obtain insurance in form and amounts deemed adequate by the risk manager.

**Sec 2-736. Authority to issue purchase orders and to approve and execute contracts for goods and/or services or concession agreements procured by competitive bid; authority to issue change orders to purchase orders and to execute amendments to procurement contracts and concession agreements.**

- (a) The city manager or a procuring department is not authorized to accept any goods and/or services, or to execute a contract for goods and/or services for which a purchase order is required pursuant to administrative policy, until the procurement administrator has issued the purchase order therefor.
- (b) In procuring goods and/or services where the cost or revenue to the city will not exceed \$25,000 annually, the procurement administrator is authorized to issue purchase orders for such goods and/or services, or concessions. Upon issuance of a purchase order by the procurement administrator, if required by administrative policy, the city manager, or the director of the procuring department if authorized by the city manager, is authorized to approve and execute the contract or concession agreement, if any, associated with such procurement.
- (c) In procuring goods and/or services, or concessions, where

the cost or revenue to the city will exceed \$25,000 annually, the procurement administrator shall make a recommendation to the city council regarding the award of the bid or concession. Upon council award of a bid, the procurement administrator is authorized to execute and issue a purchase order for such goods and/or services. Upon execution and issuance of the purchase order for goods and/or services, if required by administrative policy, the city manager, or the director of the procuring department if authorized by the city manager, is authorized to execute the contract, if any, associated with that procurement. Upon council award of a concession, the city manager, or the director of the procuring department if authorized by the city manager, is authorized to execute the concession agreement.

- (d) The procurement administrator may approve, execute and issue change orders to purchase orders, authorizing the payment of an additional sum for an additional unit of goods and/or services, when the sum of the original purchase order amount plus the change order amount(s) does not exceed \$25,000.00. Upon approval of the city council. the procurement administrator shall issue a change order to a purchase order when the sum of the original purchase order amount plus the change order amount(s) exceeds \$25,000.00. If a contract is associated with such purchase order, the city manager, or the department director if authorized by the city manager, is authorized to execute the required contract amendment.
- (e) The procurement administrator may also approve, execute and issue change orders to purchase orders previously approved by city council when the change order amount(s) does not exceed ten per cent of the original purchase order amount, or \$15,000.00, whichever is less.
- (f) The city manager or a procuring department is not authorized to execute a contract amendment for additional units of good and/or services, for which a purchase order is required pursuant to administrative policy, or to accept such additional goods and/or services, until the procurement administrator has issued the change order to the purchase order.

**Sec 2-737. Renewal of contracts awarded pursuant to competitive bid.**

Contracts for the provision of goods and/or services, or concession procured pursuant to the competitive bid process shall not be for an initial term in excess of one year, and shall not result in the extension of the contract for more than two (2) one year renewals after the expiration of the initial term. However, as to contracts for goods and/or services or concessions where the cost or revenue will exceed \$25,000.00 annually, the city council, the city manager, the airport board or the municipal housing board may provide for an initial term in excess of one year, or may provide for the renewal of such contracts, when such longer initial term or renewals are deemed to be in the best interests of the city. As to contracts for goods and/or services or concessions where the cost or revenue will not exceed \$25,000.00 annually, the city manager, or the procurement administrator if authorized by the city manager, may provide for an initial term in excess of one year, or may provide for the renewal of such contracts, when such longer initial term or renewals are deemed to be in the best interests of the city. Contracts may only be renewed if renewal is provided for in the bid specifications, which shall identify the terms of the renewal and the number of permitted renewals. Compensation to be paid the successful bidder shall not be increased during any renewal term unless such increase is provided for in the original contract and bid specifications.

**Sec. 2-738. Assignment of contract prohibited.**

No purchase order or contract awarded to the lowest bidder or to the highest responsible bidder, as the case may be, shall be assignable by the successful bidder without the written consent of the officer or body which authorized the award.

**Part 3 - Procurement by Request for Proposals.**

**Sec. 2-746. Procurement of goods, services and concessions subject to the request for proposals (RFP) process; exceptions.**

- (a) In procuring goods and/or services under the request for proposals (RFP) process, selection of the successful proposal may be based upon criteria in addition to cost to the city and compliance with specifications, including but not limited to experience, expertise and/or qualifications of the provider; quality of the goods and/or services; and the quality and availability of training or repair services. In procuring concessions at city facilities, selection of the successful proposal may be based upon

criteria in addition to revenue to the city and compliance with specifications, including but not limited to capital investment, experience, financial resources, business plan, and involvement of Disadvantaged Business Enterprises.

(b) The procurement of goods and/or services for the city or concessions, wherein criteria in addition to cost or revenue to the city and compliance with specifications will be considered in selecting from among competing proposers, and wherein the cost or revenue to the city is estimated to exceed \$25,000 annually, shall be accomplished under the RFP process outlined in this part, with the following exceptions:

- (1) The procurement of legal services shall be exempt from the RFP process and shall be administered by the city attorney.
- (2) The procurement of professional engineering or architectural services which will result in the design and construction of public improvements shall be accomplished pursuant to the engineering department's RFP process, which shall be administered by the city engineer, who shall be governed by the same requirements as the procurement division regarding advertisement, authorization limits and change orders.
- (3) The procurement of other professional services (e.g. conceptual design services, program consulting services, etc.) where the total anticipated cost of those services will not exceed \$25,000, shall be exempt from the RFP process outlined in this part and shall be administered by the director of the department procuring those services in a manner reasonably calculated to assure the best interests of the public, under the oversight of the procurement division.
- (4) The procurement of goods and/or services, where the total anticipated cost of those goods and/or services will not exceed \$25,000, shall be exempt from the RFP process outlined in this part and shall be administered by the director of the procuring department in a manner reasonably calculated to assure the best interests of the public, under the oversight of the procurement division.
- (5) The procurement of sponsorship services which provide funding and/or promotion, marketing or assistance with the implementation of events, services or programs undertaken by the park and recreation department.
- (6) The sale of advertising under guidelines approved by the procurement administrator.



- (7) The procurement of entertainers or performing artists for civic programs and events, when the availability of such person does not lend itself to competitive procurement.
  - (8) The procurement of professional services being funded by federal funds, and where applicable federal law or regulation requires the use of a request for qualifications process.
- (c) The procurement of concessions for the city, wherein criteria in addition to revenue to the city and compliance with specifications will be considered in selecting from among competing proposers, shall be accomplished under the RFP process outlined in this part, with the following exceptions:
- (1) A nonprofit agency or organization need not complete the RFP process but must obtain written permission from the city manager to sell consumer goods and/or services to its members or the public on city property.
  - (2) A temporary concession may be granted through a written agreement approved by the city manager, or the director of the procuring department if authorized by the city manager, without completing the RFP process.
- (d) Concessions involving the lease or exclusive use of city property for a period of more than three years shall be subject to approval of the city council, as provided by Section 364.7 of the Iowa Code.

**Sec. 2-747. Bond, indemnity and insurance.**

- (a) When deemed to be in the public interest by the procurement administrator, proposers may be required to submit a bond, with good and sufficient sureties, in an amount deemed adequate to assure performance of the contract in the time and manner prescribed in the contract, to secure the payment of the proposer's subcontractors and suppliers, and to assure maintenance of the goods.
- (b) Proposers shall be required to execute an indemnity in favor of the city, agreeing 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 awarding the contract or which may in any way result from the proposer's performance thereof.
- (c) When deemed to be in the public interest by the city's risk manager, proposers may be required to obtain insurance in form and amounts deemed adequate by the risk manager.

**Sec. 2-748. Preparation of RFPs; review and approval of RFPs prior to issuance.**

The department requesting the procurement of goods and/or services, or the procurement of a concession, by RFP shall be responsible for preparing the RFP. All RFPs shall be subject to review by the procurement administrator and the legal department for conformance with the requirements of this subdivision prior to issuance, provided that when determined necessary by the city manager, or upon request of any council member, RFPs shall be subject to review and approval by the city council prior to issuance.

**Sec. 2-749. Contacts with potential proposers prior to issuance of RFP limited to proposer's conference; consultant participating in RFP formation prohibited from responding to RFP.**

In order to prevent the appearance of bias in developing the specifications or scope of services for an RFP, prospective proposers shall not be contacted or consulted by the department developing the RFP, except in the context of a proposer's conference for all potential proposer's to solicit input regarding the RFP. If a consultant is utilized in the development of the specifications or scope of services for an RFP, that consultant shall not be allowed to submit a proposal in response to the RFP or to participate in a response by another proposer.

**Sec. 2-750. Issuance and publication of RFPs.**

The procurement administrator, in consultation with the sponsoring department, shall in each instance determine the most appropriate manner for issuance and promulgation of RFPs. RFPs shall be promulgated in such manner as will reasonably assure notification to all potential proposers from whom the city would desire to receive proposals. Notice of the pendency and availability of RFPs shall, at a minimum, be published by the procurement administrator in a secular English language daily newspaper of general circulation throughout the city at least seven days in advance of the date announced for receiving proposals, excluding Sundays and legal holidays.

**Sec. 2-751. Procurement administrator the sole point of contact for proposer questions, objections or requests for information, clarification or interpretation; proposers prohibited from**

**inappropriate communication with city officials or employees; inappropriate communication may result in rejection or return of proposals; inappropriate communication may be considered in evaluation of proposals; appeal of procurement administrator's or staff's determinations regarding RFP terms or bias.**

- (a) In order to ensure an open process and the provision of equal knowledge and opportunity to all potential proposers, the procurement administrator shall serve as the sole point of contact for questions, objections, informational requests and requests for clarification or interpretation during the RFP process. Only written questions, objections or requests for clarification or interpretation, submitted by mail, FAX, or e-mail, shall be accepted from potential proposers.
- (b) After issuance of an RFP by the city, persons or entities who intend to respond to such RFP and who desire to pose questions, objections, or requests for information, clarification or interpretation regarding any term, provision, or requirement of the RFP, shall not attempt to communicate with, in writing, electronically, or orally, any city official or employee other than the city's procurement administrator. Persons or entities who intend to respond to such RFP shall not communicate with, in writing, electronically, or orally, any other city official or employee in an attempt to gather information which would be helpful in responding to the RFP, or in an attempt to influence the city's consideration of its competing proposal. All inappropriate communications with city officials or employees shall be reported to the procurement administrator and to the evaluation and selection committee. Such inappropriate communication by a proposer or potential proposer may, at the discretion of the procurement administrator, constitute grounds for disqualification of that proposer's proposal, resulting in the procurement administrator's refusal to accept such proposal or in the return of such proposal. The evaluation and selection committee may in its discretion consider such inappropriate communication in evaluating and scoring such proposal. The procurement administrator shall advise city officials and employees of the pendency of RFPs for evaluation or award, and during the pendency thereof city officials and employees shall be prohibited from engaging in discussion of an RFP with a proposer or potential proposer unless so directed or approved by the procurement administrator.
- (c) The foregoing notwithstanding, any proposer or potential

proposer who believes that the terms of an RFP are objectionable, or who believes that the procurement administrator or other city staff have not appropriately responded to its questions, objections, or requests for information, clarification or interpretation regarding any term, provision, or requirement of the RFP, or who believes that the procurement administrator, other city staff or the evaluation and selection committee have a bias against it or are treating it unfairly, may communicate its concerns in that regard to the city manager or the city council. A proposer or potential proposer who wishes to raise such an issue with the city manager or city council shall first communicate its concerns directly to the city manager, orally or in writing. If the city manager cannot resolve the issue to the satisfaction of the proposer or potential proposer, the city manager shall, at the request of the proposer or potential proposer, forward such concerns to the city council for its consideration.

**Sec. 2-752. Proposers conference.**

A proposers conference may be held at the time and place scheduled in the RFP. The procuring department shall coordinate the holding of such conference under the oversight of the procurement administrator. All persons or entities interested in or intending to respond to the RFP may be required to attend the proposers conference and participate as a prerequisite for submission of a proposal. At said conference, any person or entity interested in or intending to respond to the RFP may present, orally or in writing, questions, objections, or requests for clarification or interpretation as to any term, provision, or requirement of the RFP.

**Sec. 2-753. City's response to proposer questions, objections, and requests for clarification or interpretation; issuance of addenda to RFP.**

The city's procurement administrator shall respond in writing to all questions, objections, or requests for information, clarification or interpretation presented to the city as provided in section 2-751, or presented at a proposer's conference. Such written responses shall be directed to all known potential proposers. Only the city's written responses shall be considered the city's official response binding upon the city. In addition to making a written response, the city may issue addenda amending the RFP.

**Sec. 2-754. Submission and opening of proposals.**

All proposals made pursuant to this part shall be publicly opened by the procurement administrator at such time and place as shall be specified in the RFP, and all such proposals shall be available for a reasonable time to public inspection in the office of the procurement administrator.

**Sec. 2-755. Evaluation and selection committee; procedure for evaluation and recommendation as to selection of best proposal; submission of recommendation to city council.**

- (a) Competing proposals submitted in response to an RFP shall be evaluated by an evaluation and selection committee appointed by the director of the department sponsoring the RFP. The evaluation and selection committee shall evaluate the competing proposals and make a recommendation regarding the best proposal. In conducting the evaluation, the committee shall utilize the evaluation criteria and scoring methodology set forth in the RFP.
- (b) Upon completing its evaluation of competing proposals, the committee shall make a written report of its determination and recommendation as to the selection of the best proposal. The report shall be filed with the department director and procurement administrator. The procurement administrator shall send the report and notice of intent to award to all competing proposers by ordinary mail, FAX or e-mail at the address, telephone number or e-mail address shown in their proposals not less than five (5) days prior to the appeal deadline set forth in the notice of intent to award.
- (c) It shall be the responsibility of the procurement administrator to determine if all RFP requirements have been met and if all required submittals have been made by proposers, and to thereafter submit the recommendation of the evaluation and selection committee and the roll call approving the recommended proposal to the city council for approval.

**Sec. 2-756. Appeal of evaluation and selection committee recommendation; proposer objections to be submitted in writing; hearing by city manager or hearing officer; resolution of proposer objections; city council consideration of appeal report and of the appealing proposer's objections.**

- (a) Opportunity for proposers to appeal evaluation and selection committee recommendation as to selection of best

proposal; required submission in support of objection.

A proposer who is aggrieved by the evaluation and selection committee's determination and recommendation as set forth in the committee's report, may appeal such determination and recommendation by filing a written objection thereto with the procurement administrator by the appeal deadline set forth in the notice of intent to award. Such objections may be filed in person or by mail, FAX or e-mail. In its written objection, the appealing proposer shall set forth all of its objections to the committee's recommendation and all arguments in support thereof, and shall attach thereto all documentation supporting its objections which it intends to rely on in making its appeal. The appealing proposer may request a hearing on its appeal, but the determination whether to hold a hearing or to determine the appeal on the basis of the record made in the written objection shall be discretionary with the city manager. If the appeal is timely filed, the procurement administrator shall forward the proposer's written objection and all supporting documentation to the city manager.

(b) Appeal heard by city manager or hearing officer.

Upon receipt of the proposer's written object, the city manager shall determine if the appeal will be determined by the city manager or if it will be determined by a hearing officer selected by the city manager. The city manager may set for hearing at the same time, date, and place the objections of two or more proposers. All proposers shall be notified of the date, time and place of hearing. The hearing shall be held pursuant to procedures set forth in the RFP or established by the city manager. The award of a contract shall be deferred pending the outcome of the appeal.

(c) Report of city manager or hearing officer to city council and to appealing proposer.

Upon completing the review of the appealing proposer's written objection, or upon the conclusion of the hearing, the city manager or the designated hearing officer shall make a written appeal report setting forth the determination of the appeal. All objections made by the appealing proposer shall either be affirmed or overruled. The appeal report shall immediately be forwarded to the appealing proposer.

If an appealing proposer's objection is affirmed, the city manager or hearing officer shall reject the recommendation of the evaluation and selection committee, and shall direct the committee to reconvene to reevaluate the proposals submitted in response to the RFP. In conducting its reevaluation, the committee shall consider all objections affirmed by the city manager or hearing officer. Upon completing its reevaluation, the committee shall make a written report of its determination

and recommendation as to the selection of the best proposal, and shall file the report with the city manager and mail same to competing proposers. Such determination and recommendation shall be final as to all proposers.

If the appealing proposer's objection is overruled, the appeal report shall be forwarded to the city council, and the appealing proposer and all competing proposers shall be given written notification of the date of the council meeting at which said report and the recommendation of the evaluation and selection committee will be considered by the city council.

(d) City council's consideration of city manager's or hearing officer's report; city council's consideration of the appealing proposer's objections.

When the city manager's or hearing officer's report comes before the city council for consideration, the city council may affirm or overrule the findings and determination of the city manager or hearing officer as set forth in said report. The city council may, in its discretion, hear presentations by the appealing proposer and by competing proposers with respect to the appealing proposer's objections, and with respect to the findings and determination of the city manager or hearing officer.

If the city council votes to affirm the report of the city manager or hearing officer, it shall then take up and consider the recommendation of the evaluation and selection committee. If the city council votes to overrule the report of the city manager or hearing officer, the recommendation of the evaluation and selection committee shall be considered rejected, and the city council may direct the evaluation and selection committee shall reconvene to reevaluate the proposals submitted in response to the RFP, or the city council may award the contract as it determines appropriate. The city council's decision shall be considered final.

**Sec. 2-757. Alternative appeal procedure for procurements subject to city council approval - direct appeal to city council.**

(a) In lieu of an objecting proposer's appeal being heard and determined by the city manager or by a hearing officer selected by the city manager, the RFP for procurement of goods and/or services subject to city council approval may provide that a proposer's objection to the recommendation of the evaluation and selection committee may be referred

directly to the city council for determination as provided in this section. Alternatively, the city manager may, after the issuance of an RFP, authorize use of the alternative appeal procedure provided in this section where it is determined that use of the appeal procedure provided in section 2-756 above will unduly delay the city's procurement of necessary goods and/or services. The city manager's decision, made after the issuance of an RFP, to utilize this alternative appeal procedure shall be communicated to all proposers prior to or contemporaneously with the provision of the report of the evaluation and selection committee and notice of intent to award, as provided in section 2-755(b) above.

- (b) A proposer who is aggrieved by the evaluation and selection committee's determination and recommendation as set forth in the committee's report, may appeal such determination and recommendation by filing a written objection thereto with the procurement administrator by the appeal deadline set forth in the notice of intent to award. Such objections may be filed in person or by mail, FAX or e-mail. In its written objection, the appealing proposer shall set forth all of its objections to the committee's recommendation and all arguments in support thereof, and shall attach thereto all documentation supporting its objections which it intends to rely on in making its appeal. The procurement administrator shall forward the proposer's written objection, together with all supporting documentation, to the city council.
- (c) The city council may determine the appeal on the basis of the record made in the written objection, or it may hold a hearing to determine the appeal. The city council may set the appeal for hearing at a regular or special meeting, and it may hold the hearing in conjunction with its consideration of and action on the recommendation of the evaluation and selection committee. The procurement administrator shall advise the objecting proposer whether a hearing will be held and of the time and date of such hearing.
- (d) If an appealing proposer's objection is affirmed, the city council may direct the evaluation committee to reconvene to reevaluate the proposals submitted in response to the RFP, or the city council may award the contract as it determines appropriate. In conducting its reevaluation, the committee shall consider all objections affirmed by the city council. If the appealing proposer's objection is overruled, the city council may accept the recommendation of the evaluation and selection committee and award the contract



accordingly, or it may award the contract to the proposer whose proposal it determines is the best proposal.

- (e) The procurement administrator shall give written notification to the objecting proposer and to all competing proposers of the action taken by the city council pursuant to the appeal.
- (f) The city council's decision upon appeal shall be considered final.

**Sec. 2-758. Rejection of proposals.**

The city reserves the right to reject any or all proposals in whole or in part received in response to the RFP. The city will not pay for any information requested in the RFP, nor is it liable for any cost incurred by a proposer in responding to the RFP.

**Sec. 2-759. City council selection of best proposal; notification of successful proposer.**

The city council will by resolution approve the proposal which it selects as the best proposal. Upon the city council's approval of the proposal, the procurement administrator shall give notice advising the proposer whose proposal was selected what actions must be taken to complete the formation of the contract.

**Sec 2-760. Authority to execute procurement contracts and concession agreements and to issue purchase orders for goods and/or services or concessions procured by request for proposals; authority to execute amendments to contracts and agreements and to issue change orders to purchase orders.**

- (a) In the procurement of goods and/or services by RFP, where the estimated cost or revenue to the city will not exceed \$25,000 annually, and for which city council approval is not required, the procurement administrator is authorized to issue purchase orders for such goods and/or services,. Upon issuance of a purchase order by the procurement administrator, if required by administrative policy, the city manager, or the director of the procuring department if authorized by the city manager, is authorized to approve and execute the contract or concession agreement associated with such procurement.
- (b) In the procurement of goods and/or services, or concessions, by RFP, where the cost or revenue to the city will exceed \$25,000 annually, the city council will by

resolution approve the proposal which it selects as the best proposal. Upon council approval, the procurement administrator is authorized to issue a purchase order for such goods and/or services, if required by administrative policy. Upon council approval, and upon issuance of the purchase order, if required by administrative policy, the city manager, or the director of the procuring department if authorized by the city manager, is authorized to execute the contract or concession agreement associated with that procurement.

- (c) The city manager or a procuring department is not authorized to accept any goods and/or services, or to execute a contract for good and/or services, for which a purchase order is required pursuant to administrative policy, until the procurement administrator has issued the purchase order therefor.
- (d) City council approval of a contract amendment shall be required when the sum of the original contract amount, plus the contract amendment amount(s) exceeds \$25,000.00. The city manager, or the director of the procuring department if authorized by the city manager, may approve contract amendments and the procurement administrator may issue change orders to purchase orders, authorizing the payment of an additional sum for an additional unit of goods and/or services, when the sum of the original contract amount plus the contract amendment amount(s) does not exceed \$25,000.00.
- (e) The city manager, or the director of the procuring department if authorized by the city manager, may also approve contract amendments and the procurement administrator may issue change orders to purchase orders for procurements previously approved by city council, when the contract amendment amount does not exceed ten per cent of the original contract amount, or \$15,000.00, whichever is less.
- (f) The city manager or a procuring department is not authorized to execute a contract amendment for additional units of good and/or services, for which a purchase order is required pursuant to administrative policy, or to accept such additional goods and/or services, until the procurement administrator has issued the change order to the purchase order.

**Sec. 2-761. Term of contract; renewal of contract.**

- (a) The city's policy is that contracts for the provision of goods and/or services or for concessions, awarded pursuant

to the RFP process, should not be for an initial term in excess of three (3) years, due to the non-competitive nature of long term procurement arrangements. Contracts may only be renewed if renewal is provided for in the RFP, and the RFP shall identify the terms for renewal, including the renewal term and the number of permitted renewals, provided that the exercise of all permitted renewals shall not result in the extension of the contract for more than three (3) years after the expiration of the initial term. However, the city council, the city manager, the airport board or the public housing board may provide for an initial term in excess of three (3) years, or may provide for the renewal of such contracts, when such longer initial term or renewals are deemed to be in the best interests of the city.

- (b) The compensation to be paid the proposer shall not be increased during any renewal term unless such increase is provided for in the RFP and in the original contract. In the case of concessions, the consideration to be paid the city shall not be decreased during any renewal term unless such decrease is provided for in the RFP and in the original contract. All renewals shall be accomplished pursuant to written addendum, subject to review and approval by the city manager, or the director of the procuring department if authorized by the city manager, and the legal department. A renewal addendum must be executed by the proposer, must be approved by the officer or body that approved the original contract, and must be executed by the city manager or the director of the procuring department if authorized by the city manager.

**Sec. 2-762. Assignment of contract prohibited.**

No contract awarded to a successful proposer shall be assignable without the written consent of the city manager. In no event shall a contract or any part thereof be assigned to a proposer who has been determined not to be a responsible proposer by the procurement administrator or by an evaluation and selection committee.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Ann DiDonato, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, 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. 04-1328), passed by the City Council of said City at a meeting held June 21, 2004 signed by the Mayor on June 21, 2004 and published as provided by law in the Business Record on June 28, 2004 Authorized by Publication Order No. 4352.

Diane Rauh, City Clerk