

ORDINANCE NO. 15,696

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, as heretofore amended, by amending Sections 2-718, 2-726 and 2-738, relating to procurement.

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, as heretofore amended, is hereby amended by amending Sections 2-718, 2-726 and 2-738, relating to procurement, as follows:

**Sec. 2-718. Annual purchase agreements and contracts and contracts for demolition.**

- (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, including the municipal housing agency, but where the type or quantity of goods and/or services are unknown and where a purchase agreement for particular goods and/or services are fixed is not reasonable or cost efficient. Competitive bidding procedures shall be followed in entering into the annual purchase agreement. Annual purchase agreements where the estimated cost exceeds \$50,000.00 must be approved by the city council. Annual purchase agreements where the estimated cost will not exceed \$50,000.00 may be approved by the procurement administrator. Annual purchase agreements shall be negotiated or rebid annually, unless renewed as provided in the bid terms.
- (b) The city manager is hereby expressly authorized to enter into annual structure demolition contracts for demolition projects where the estimated cost to demolish each project does not exceed \$100,000.00 or each project has a total estimated cost equal to or less than the competitive bid threshold as established in Iowa Code Section 314.1B. The city manager shall procure such contracts by mailing and publishing annually, a solicitation for annual demolition contracts, 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 published at least once weekly and having general circulation in the city, which mailing and publication shall occur not less than five business days nor more than 20 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, as needed, obtain competitive proposals from said contractors for demolition projects within the city, and may enter into a contract addendum for a demolition project with a responsible contractor submitting the lowest responsible responsive proposal therefor, provided that the proposed cost of each demolition project does not exceed \$100,000.00, or each project has a total estimated cost equal to or less than the competitive bid threshold as established in Iowa Code Section 314.1B. If the cost of a structure demolition project will exceed \$100,000.00 or the competitive bid threshold established in section 314.2B, the engineering department shall procure competitive bids therefore for award by the city council pursuant to Iowa Code chapter 26 Public Construction Bidding. In determining the total costs of a structure demolition project, the costs of demolition asbestos removal and the demolition structure removal bids shall both be included.

**Sec. 2-726. Exceptions to Procurement of goods and services under competitive bidding or request for proposals process.**

- (a) The procurement of goods and/or services or concessions, wherein cost to the city and compliance with specifications will be the only criteria considered in selecting among competing bidders, or 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 not to exceed \$50,000 annually, shall be an exception from the formal competitive bidding and the RFP procedure outlined in this subdivision, unless the procurement administrator reasonably determines that such procedures shall be followed in order to assure the best interests of the public. Procurements which are excepted from the formal bidding or RFP procedure shall be administered by the procurement administrator in a manner reasonably calculated to assure the best interests of the public, and shall include the following:
  - (1) The procurement of other professional services (e.g. planning services, program consulting services, etc.) where the total anticipated cost of those services will not exceed \$50,000.
  - (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, including natural gas, electric, water, cable, and land telephone lines, and fuel and fuel services for vehicles, equipment, and facilities and landfill dumping fees.
  - (5) Contracts for the procurement of goods and/or services through which nonprofit 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.
- (b) The following procurements shall be exceptions to the competitive bidding and RFP competitive procedure in this subdivision and shall be administered by the director of the procuring department in a manner reasonably assuring the best interests of the public:

- (1) 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.
    - a. The city council may, on a case-by-case basis, upon the recommendation of the city engineer for good cause shown, exempt negotiated contracts for professional engineering or architectural services which will result in the design and construction of public improvements from the requirements of the engineering department's RFP process and the advertising requirement of section 2-730.
    - b. The procurement of professional engineering or architectural services which will result in the design and construction of public improvements, where the total estimated cost will not exceed \$50,000, shall be administered by the city engineer and accomplished pursuant to the engineering department's process which shall be reasonably calculated to assure the best interests of the public.
  - (2) The procurement of legal services shall be administered by the city attorney. 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.
  - (3) 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.
  - (4) The sale of advertising under the oversight of the procurement administrator.
  - (5) 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.
  - (6) 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.
  - (7) The procurement of travel services.
  - (8) The procurement of event food and beverage and catering services.
  - (9) Real estate and real property transactions, and the procurement of real estate appraisals and title opinions.
- (c) 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 procurement administrator so finds and declares in writing. The procurement administrator's written determination shall be filed with the procurement documents in each such instance.
- (d) 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 procurement administrator so finds and declares in writing. The procurement administrator's written determination shall be filed with the procurement documents in each such instance.
- (e) 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.
  - (f) The procurement of goods and/or services by a department, involving a city expenditure of less than \$5,000, under the oversight of the procurement administrator.
  - (g) A temporary concession may be granted through a written agreement approved by the city manager, or the director of the requesting department if authorized by the city manager, without completing the competitive procurement process. 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.
  - (h) Annual structure demolition contracts shall be accomplished pursuant to section 2-718(b).
  - (i) The procurement of officer and employee training and development, including continuing education and educational seminars.
  - (j) 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.
  - (k) The procurement administrator is 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 Administrative Services, the Iowa Department of Transportation, and the Iowa Communications Network pursuant to procedures established by Iowa Code Chapter 8A and rules and regulations promulgated thereunder, or pursuant to supply schedules of Polk County contracts or accepted bids pursuant to Polk County's bidding procedures, without conforming to the competitive bidding requirements of this subdivision.
  - (l) The procurement administrator is hereby expressly authorized to procure from any federal, state, county 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, county, or local government unit or agency.
  - (m) The procurement administrator is hereby expressly authorized to procure goods and/or services from contracts that have been competitively established through cooperative group contracting consortiums for state government departments, institutions, agencies and political subdivisions, without conforming to the competitive bidding requirements of this division.

- (n) The procurement administrator is hereby expressly authorized to procure goods and/or services through a joint bid with Polk County or other governmental entities by a competitive bidding procedure, without conforming to the competitive bidding requirements of this subdivision.
- (o) 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 division.
- (p) Library Board of Trustees procurements pursuant to Iowa Code Chapter 392.
- (q) Information and services provided by the Iowa Online Warrants and Articles Criminal Justice Information System pursuant to Iowa Code Chapters 80 and 692.
- (r) 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 or other process.
- (s) Services required to be provided pursuant to a court order.

**Sec. 2-738. Procurement administrator the sole point of contact for proposer questions, 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.**

- (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, informational requests, and requests for clarification or interpretation during the RFP process. Only written questions, or requests for information, clarification, or interpretation submitted by mail, facsimile, 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, 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 the requesting department employees of the pendency of RFPs for evaluation by the evaluation and selection committee by posting RFPs on the city internal website, 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. Notwithstanding the foregoing, proposers are not prohibited from communication with the city council members at a city council meeting after issuance of the notice of intent to award by the procurement administrator.

Section 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. 18-1436), passed by the City Council of said City at a meeting held August 20, 2018 signed by the Mayor on August 20, 2018 and published and provided by law in the Business Record on September 7, 2018. Authorized by Publication Order No. 10497.

Diane Rauh, City Clerk