

ORDINANCE NO. 16,219

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 2-708, 2-709, 2-710, 2-711, 2-716, 2-718, 2-719, 2-726, 2-729, 2-730, 2-732, 2-738, and 2-741, relating to procurement by increasing the dollar value of contracts for goods and services that are administratively approved, revising the bid and request for proposal processes to utilize online bidding and proposal platform(s), and to delete requirement for public opening of sealed bids and proposals in response to request for proposal.

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 2-708, 2-709, 2-710, 2-711, 2-716, 2-718, 2-719, 2-726, 2-729, 2-730, 2-732, 2-738, and 2-741, relating to procurement by increasing the dollar value of contracts for goods and services that are administratively approved, revising the bid and request for proposal processes to utilize online bidding and proposal platform(s), and to delete requirement for public opening of sealed bids and proposals in response to request for proposal, as follows:

Sec. 2-708. City manager authorized to adopt administrative rules, regulations and procedures implementing the provisions of this subdivision, to approve exemptions therefrom, and to execute contracts not to exceed \$100,000.

- (a) The city manager, or the procurement administrator if designated by 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.
- (b) The city manager or the finance director if designated by the city manager, may exempt procurements and contracts from the administrative rules, regulations and procedures adopted under this subdivision.
- (c) The city manager may execute contracts to procure goods and/or services where the estimated cost or revenue will not exceed \$100,000 annually and may authorize department directors and the procurement administrator to execute such contracts. Such contracts and related purchase orders may only be executed by the city manager, or by department directors or the procurement administrator if applicable, following review and approval as to form by the city attorney or their designee if any of the following circumstances apply:
 - (1) The contract or purchase order contains terms and conditions proposed by the bidder, proposer, concessionaire, or other vendor or service provider, other than contract or unit cost, unit quantity, scope of work, and duration and timing;
 - (2) The contract or purchase order is for goods or services to be procured using master contract(s) or agreement(s) involving nonprofit associations, cooperative chapter 28E agreements, federal, state, county or other local government contracts, or cooperative group contracting consortiums;

- (3) The contract terms are not limited to (i) city template document(s) previously approved as to form by the city attorney or their designee or (ii) standard city-issued purchase order(s) referring only to terms incorporated into the city's request for quotation or bid.

Sec. 2-709. Public and operating emergencies.

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- (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 \$100,000, 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.

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Sec. 2-710. City council and city manager may exempt contracts from the provisions of this subdivision.

- (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, and authorize use of an informal competitive bidding procedure or authorize direct procurement without a competitive process for the procurement of goods and/or services to cost in excess of \$100,000.
- (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 and authorize the negotiation of a contract for the procurement of goods and/or services estimated to cost in excess of \$100,000.
- (c) The city manager, or the procurement administrator if designated by the city manager, may, upon the recommendation of the requesting department for good cause shown, exempt the procurement by competitive bidding procedure and authorize use of informal competitive bidding procedures or authorize direct procurement without a competitive process for the procurement of goods and/or services estimated to cost \$100,000 or less. Resulting contracts and purchase orders may only be executed by the city manager, or by department directors or the procurement administrator if applicable, following review and approval as

to form by the city attorney or their designee if any of the circumstances described in Section 2-708(c) apply.

- (d) The city manager, or the procurement administrator if designated by the city manager, may, upon the recommendation of the requesting department for good cause shown, exempt the procurement by request for proposals process and authorize the negotiation of a contract for the procurement of goods and/or services estimated to cost \$100,000 or less. Resulting contracts and purchase orders may only be executed by the city manager, or by department directors or the procurement administrator if applicable, following review and approval as to form by the city attorney or their designee if any of the circumstances described in Section 2-708(c) apply.

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

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

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- (4) The procurement of goods and/or services, where the total anticipated cost of those goods and/or services will not exceed \$100,000 annually shall be exempt from the bidding or request for proposal process outlined in this subdivision and shall be administered in a manner reasonably calculated to assure the best interests of the public under the oversight of the procurement division. Related contracts and purchase orders may only be executed by the city manager, or by department directors or the procurement administrator if applicable, following review and approval as to form by the city attorney or their designee if any of the circumstances described in Section 2-708(c) apply.

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Sec. 2-716. Authority to issue purchase orders and to approve and execute contracts for goods and services and concession agreements; authority to execute amendments to contracts and agreements and to issue change orders to purchase orders.

- (a) The city manager or department requesting a procurement is not authorized to accept any 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 the procurement of goods and/or services, where the estimated cost or revenue to the city will not exceed \$100,000 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 or concessions. The city manager, or the director of the department requesting the procurement or the procurement administrator, if authorized by the city manager, is authorized to approve and execute the contract or concession agreement associated with such procurement. Such contracts and concession agreements and related purchase orders may only be executed by the city manager, or by department directors or the procurement administrator if applicable, following review and approval as to form by the city attorney or their designee if any of the circumstances described in Section 2-708(c) apply. If authorized by the city manager, the procurement administrator is authorized to approve renewal terms for goods and services and concessions.

- (c) In the procurement of goods and/or services, or concessions, where the cost or revenue to the city will exceed \$100,000 annually, the procurement administrator shall make a recommendation to the city council regarding the award of the bid or concession which shall be approved by the city council, or, if the procurement was done by request for proposal, 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 procurement, if required by administrative policy. In the event that the city council does not designate who will execute the contract on behalf of the city, the city manager, or the director of the department requesting the procurement or the procurement administrator, if authorized by the city manager, is authorized to execute the contract or concession agreement associated with that procurement.
- (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 \$100,000.00. The city manager, or the director of the department requesting the procurement or the procurement administrator, 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 \$100,000.00. Such contract amendments and change orders may only be executed by the city manager, or by department directors or the procurement administrator if applicable, following review and approval as to form by the city attorney or their designee if any of the circumstances described in Section 2-708(c) apply.
- (e) 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 \$100,000.00. 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 \$100,000.00. If a contract is associated with such purchase order, the city manager, or the director of the department requesting the procurement, is authorized to execute the required contract amendment. Such contract amendments and change orders may only be executed by the city manager, or by department directors or the procurement administrator if applicable, following review and approval as to form by the city attorney or their designee if any of the circumstances described in Section 2-708(c) apply.
- (f) The city manager, or the director of the department requesting the procurement or the procurement administrator, if authorized by the city manager, may also approve and execute contract amendments and the procurement administrator may issue change orders to purchase orders for procurements previously approved by city council, when the contract amendment or change order amount does not exceed twenty per cent of the original contract amount, or \$50,000.00, whichever is less. Such contract amendments and change orders may only be executed by the city manager, or by department directors or the procurement administrator if applicable, following review and approval as to form by the city attorney or their designee if any of the circumstances described in Section 2-708(c) apply.
- (g) The city manager, department directors, or a procuring department is not authorized to accept additional goods and/or services, until the procurement administrator has issued the change order to the purchase order.

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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 \$100,000.00 must be approved by the city council. Annual purchase agreements where the estimated cost will not exceed \$100,000.00 may be approved by the procurement administrator. Such agreements may only be executed by the city manager or the procurement administrator following review and approval as to form by the city attorney or their designee if any of the circumstances described in Section 2-708(c) apply. 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, 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 published at least once weekly and having of 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. Such contract addenda may only be executed by the city manager following review and approval as to form by the city attorney or their designee if any of the circumstances described in Section 2-708(c) apply. 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. 2-719. Assignment of contract prohibited.

No contract or purchase order awarded to a successful bidder or proposer shall be assignable by the successful proposer or bidder without the written approval of the city manager or approval of the city council. In no event shall a contract or any part thereof be assigned to a party who has been determined not to be a responsible bidder or proposer by the procurement administrator or by an evaluation and selection committee. For contracts or purchase orders where the estimated cost will not exceed \$100,000 annually, no purchase order or contract awarded to a bidder or proposer shall be assignable by the successful bidder or proposer without the written approval of the city manager, or the procurement administrator, if authorized by the city manager.

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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 \$100,000 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 \$100,000.

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Sec. 2-729. Competitive bidding.

- (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 \$100,000.00 annually, and where the selection criteria include only the lowest or highest bid and compliance with bid specifications, shall be made 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.
- (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 \$100,000.00 annually, and where the selection criteria include only the lowest or highest bid and compliance with bid specifications, shall be made 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 \$100,000.00, 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 \$100,000.00 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 \$100,000.00, 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. 2-730. Advertisement and manner of issuance for bids and requests for proposals.

- (a) All advertisements for bids and notices of requests for proposals to award purchase orders or contracts where the annual estimated cost or revenue to the city will exceed \$100,000.00 shall be posted on the city's website at least seven days in advance of the date announced for receiving bids or proposals, excluding weekends and legal holidays, except the city council may waive posting in times of public emergency.
- (b) Nothing contained in this section shall be construed to prohibit the procurement administrator from promulgating additional announcements in local newspapers,

recognized trade journals, on the city cable television channel, on the city's internet website, on other appropriate websites, by other electronic media, by online bidding and proposal platform(s), or by mailing announcements to potential bidders.

- (c) Advertisements for bids or requests for proposals shall generally describe the goods and services to be procured with information on where to obtain the bid or request for proposals documents, which documents shall provide sufficient information to enable the bidders or proposers to know their expected obligations, which documents shall be in the office of the procurement administrator and available on the city's online bidding and proposal platform(s), at the time of the publication of the first announcement. This advertisement shall also state the date and time assigned for the opening of bids or the request for proposals, and no bids or proposals shall be received at any time subsequent to the time indicated in the announcement.
- (d) Only the procurement division is authorized to advertise and to solicit for bids or issue requests for proposals.
- (e) The requirements of this section do not apply to requests for proposals issued by the engineering department pursuant to section 2-726(b)(1)(a).

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Sec. 2-732. Opening and public inspection of bids and RFPs.

All sealed bids and proposals in response to requests for proposals shall be opened by the procurement administrator or his or her designee at such time as shall be specified in the advertisement or invitation for bids or notice of proposals, and all such bids or proposals shall be available for a reasonable time to public inspection in the office of the procurement administrator.

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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 per the instructions found in the RFP documents shall be accepted from potential proposers.

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Sec. 2-741. Evaluation and selection committee; procedure for evaluation and recommendation as to selection of best proposal; submission of recommendation to city council.

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- (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 highest scoring 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 e-mail at the e-mail address shown in their proposals, or through the city's online bidding and proposal platform, not less than five (5) days prior to the appeal deadline set forth in the notice of intent to award.

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

FORM APPROVED: Glenna K. Frank, Assistant City Attorney

T.M. Franklin Cownie, Mayor

Attest: I, Laura Baumgartner, 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. 23-0133), passed by the City Council of said City at the meeting held on January 23, 2023 and signed by the Mayor on January 23, 2023 and published and provided by law in the Business Record on February 10, 2023. Authorized by Publication Order No. 12189.

Laura Baumgartner, City Clerk