

★ **Roll Call Number**

Agenda Item Number

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Date May 10, 2010

An Ordinance entitled, "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, and amended by Ordinance No. 14,346 passed June 21, 2004, and Ordinance No. 14,408 passed January 24, 2005, and Ordinance No. 14,892 passed September 28, 2009, by amending Sections 2-726 and 2-746, relating to procurement of concessions at the airport",

which was considered and voted upon under Roll Call No. 10- 629 of April 26, 2010; again presented.

Moved by _____ that this ordinance be considered and given second vote for passage.

(Second of three required readings)


COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date	April 26, 2010
	Agenda Item No. 47 Roll Call No. <u>10-629</u> Communication No. <u>10-228</u> Submitted by: Donald L. Smithey, Interim Aviation Director	

AGENDA HEADING:

Amend subsections 2-726(a)(16) and 2-746(c)(3) of the City Code regarding the procurement of concessions at the Airport.

SYNOPSIS:

Contracts for airport-based retail concessions do not fit well with the City's current procurement process as the Code is set up primarily for the purchase of goods and services. Airport concessions involve retail sales to the traveling public, with several smaller spaces in the terminal planned and available for that use. The proposed additions to Sections 2-726 and 2-746 would remove airport concessions from the other procurement processes and clear up potential conflicts with Code section 22-50.

FISCAL IMPACT:

A precise fiscal impact is not determinable, but on recent experiences of staff, it appears that directly negotiating with interested parties could possibly result in more retail tenants striking airport concession agreements with the City.

ADDITIONAL INFORMATION:

When airport retail spaces are vacated or otherwise become available, Aviation Department staff typically field requests from retailers wanting to operate at these locations. Also, from time to time, local vendors express interest in setting up limited retail operations in the terminal building. The current City procurement ordinance requires that, before entering into any contracts, the City must publish a formal request for proposals (RFP) and review and evaluate any responses.

Aviation Staff recently completed this RFP process for retail space and received no responses. During subsequent discussions with the potential tenants, the retailers indicated that they believed the RFP process was too cumbersome compared to the scope of their intended business. They were also hesitant because they felt their response to an RFP could lead to uncertain results beyond their control. They generally indicated a preference for negotiating directly with staff on these smaller concession leases.

It would be in the City's best interests to fill these retail spaces quickly to make appropriate products available for customers of the airport. With this amendment the Board could establish a process commensurate with the expected revenue from, and interest in, the airport retail spaces. City Code section 22-50 already provides that the Airport Board has the authority to govern the operation of the airport, including the power to:

...negotiate and execute leases, concession agreements, and operating agreements of not to exceed three years in duration for the use of real property and facilities under the jurisdiction of the airport. Any leases, concession agreements, or operating agreements for the use of real property and facilities under the jurisdiction of the airport, which exceed three years in duration, shall require approval by the city council. All agreements, concession agreements and operating agreements under the jurisdiction of airport, which do not involve the lease of real property, may be negotiated and executed by the Board.

All concessions involving the lease of real property for more than 3 years would continue to be presented to the Council. Such agreements would include all the major Airport-based concessionaires. The proposed additions to City of Des Moines Code sections 2-726 and 2-746 would remove airport concessions from the other procurement processes and clear up potential conflicts with section 22-50. At its meeting of April 6, 2010, the Airport Board recommended that Council approve this amendment.

PREVIOUS COUNCIL ACTION(S): NONE

BOARD/COMMISSION ACTION(S):

Date: April 6, 2009 – Airport Board

Resolution Number: A10-056

Action: Recommend Amendment to Purchasing Ordinance for the Procurement of Airport Concessions Moved by Mr. Gentry to adopt. Motion carried: 6-0-0-1

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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ORDINANCE NO. _____

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, and amended by Ordinance No. 14,346 passed June 21, 2004, and Ordinance No. 14,408 passed January 24, 2005, and Ordinance No. 14,892 passed September 28, 2009, by amending Sections 2-726 and 2-746, relating to procurement of concessions at the airport.

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, and amended by Ordinance No. 14,346 passed June 21, 2004, and Ordinance No. 14,408 passed January 24, 2005, and Ordinance No. 14,892 passed September 28, 2009, is hereby amended by amending Sections 2-726 and 2-746, relating to procurement of concessions at the airport, as follows:

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 and fuel and fuel services for vehicles and equipment.

- (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 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.
- (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

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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) The procurement of concessions at the airport pursuant to section 22-50 of this Code.
- ~~(16)~~ (17) 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, and the Iowa Communications Network pursuant to procedures established by ~~I.C. ch. 18~~ 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.
- (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,

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agencies and political subdivisions, without conforming to the competitive bidding requirements of this division.

- (g) The procurement administrator is hereby expressly authorized to procure goods and/or services through a joint bid with Polk County by a competitive bidding procedure, without conforming to the competitive bidding requirements of this subdivision.

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.
 - (9) The procurement of concessions at the airport pursuant to section 22-50 of this Code.
- (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. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Ann DiDonato
 Ann DiDonato
 Assistant City Attorney