

ORDINANCE NO. 15,629

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 repealing Sections 2-700 through 2-765 and adding and enacting new Sections 2-700 through 2-765, 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 repealing Sections 2-700 through 2-765 and adding and enacting new Sections 2-700 through 2-765, relating to procurement, as follows:

**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. 2-701.5. 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 exceptions designated in section 2-726.

**Sec. 2-702 Procurement of goods and services under competitive bidding or request for proposal process.**

- (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 subdivision.

- (b) 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.
- (c) Except as to emergency contracts authorized by section 2-709, no procurement request shall be split into parts for the purpose of avoiding any section of this subdivision.

**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 procurement division or by a city department as authorized and approved by the procurement administrator to issue such solicitation.

*Concession* means the grant of the right to operate a 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. 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 and in common areas in city parking garages. 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. 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.

*Cost to the City* does not include insurance proceeds received by the City.

*Formal competitive bidding procedure* means the solicitation of bids by mailing and advertisement as provided by Section 2-730, 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.

*Invitation to bid* means a written solicitation to prospective suppliers or service providers to submit a bid for services or goods.

*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, but does not include the sale of real estate, employment, or public improvements construction as defined in Iowa Code Chapter 26.

*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, as defined in section 2-706, 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 the local preferences be applicable to goods

and/or services where federal regulations or law prohibits a local preference, 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 a local business if its headquarters, or the headquarters of its parent or holding company, is determined to be within the corporate limits of the city, determined by the payment of city property taxes on such headquarters 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 such headquarters 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, to approve exemptions therefrom, and to execute contracts not to exceed \$50,000.**

- (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 \$50,000 annually and may authorize department directors and the procurement administrator 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 \$50,000, 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.**

- (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 \$50,000.

- (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 \$50,000.
- (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 \$50,000 or less.
- (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 \$50,000 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) The procurement of goods and/or services, where the total anticipated cost of those goods and/or services will not exceed \$50,000 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.
- (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 departments.
- (9) Dispose of surplus property by transfer between departments, by competitive sale, or by advertisement to the public, in compliance with section 2-727(c) and (d).
- (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.
- (14) 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.

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

On all procurements 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. Contacts with potential bidders or proposers prior to issuance of bid or RFP; consultant participating in bid or RFP formation prohibited from responding to invitation to bid or RFP.**

In order to prevent the appearance of bias in developing the specifications or scope of services for a bid or an RFP, the department developing the bid specifications or the RFP shall not consult with prospective bidders or proposers to develop specifications regarding the bid or RFP. If a consultant is utilized in the development of the specifications or scope of services for a bid or an RFP, that consultant shall not be allowed to submit a bid or proposal in response to the invitation to bid or RFP or to participate in a response by another bidder or proposer.

**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 \$50,000 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. 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 \$50,000 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 \$50,000.00. 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 \$50,000.00.
  - (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 \$50,000.00. 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 \$50,000.00. 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.
  - (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 \$25,000.00, whichever is less.
  - (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.

**Sec. 2-717. 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 bidding or request for proposals process shall not exceed a total of six (6) years, including an initial term and renewals due to the non-competitive nature of long term procurement arrangements. The term and renewal periods shall be determined by the procurement administrator. Contracts may only be renewed if renewal is provided for in the bid or request for proposals. Requests for proposals shall identify the terms for renewal, including the renewal term and the number of permitted renewals. However, the city council, the city manager, or the public housing board may provide for an initial and renewal term in excess of six (6) three (3) years, or may provide for the renewal of such contracts, when such longer initial term or renewal are deemed to be in the best interests of the city.
- (b) The compensation to be paid shall not be increased during any renewal term unless such increase is provided for in the bid or request for proposals 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 department making the procurement or the procurement administrator, if authorized by the city manager, and the legal department. A renewal addendum must be executed by the bidder or proposer, 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 department making the procurement if authorized by the city manager.

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

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.

**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 \$50,000 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.

**Sec. 2-720. 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.

**Sec. 2-721—2-725. Reserved.**

**Part 2. Exceptions to Competitive Solicitation Process**

**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 subsection (b)(2) above.
    - 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 demolition contracts shall be accomplished pursuant to the engineering department's competitive bid process which shall be administered by the city engineer.
- (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. 2-727—2-728. Reserved.**

**Part 3. Formal Bid and Request for Proposals Process.**

**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 \$50,000.00 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 \$50,000.00 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 \$50,000.00, 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 \$50,000.00 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 \$50,000.00, 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 \$50,000.00 shall be published in a secular English language daily newspaper of general circulation throughout the city or posted on the city's website at least seven days in advance of the date announced for receiving bids or proposals, excluding Sundays and legal holidays, except the city council may waive publication in times of public emergency.
- (b) All invitations to bid and notices of requests for proposals shall be posted on readily accessible bulletin boards in the office of the procurement administrator at least seven days in advance of the date prior to receipt of bids or proposals, except that RFPs issued by the city engineer are exempt from this requirement.
- (c) 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, or by mailing announcements to potential bidders.
- (d) 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 website, 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 or the request for proposals, and no bids or proposals shall be received at any time subsequent to the time indicated in the announcement.
- (e) Only the procurement division is authorized to advertise and to solicit for bids or issue requests for proposals.
- (f) 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).

**Sec. 2-731. Bond, indemnity and insurance.**

- (a) When deemed to be in the public interest by the procurement administrator, bidders and 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 bidder's or proposer's subcontractors and suppliers, and to assure maintenance of the goods.
- (b) Bidders and 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 bidder's or proposer's performance thereof, unless otherwise approved by the city manager or his designee.

- (c) When deemed to be in the public interest by the city's risk manager, bidders and proposers may be required to obtain insurance in form and amounts deemed adequate by the risk manager.

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

All sealed bids and proposals in response to requests for proposals shall be publicly opened by the procurement administrator or his or her designee at such time and place 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.

**Sec. 2-733. 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. 2-734. Rejection of bids and proposals.**

- (a) 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 city fails to appropriate funds; or if funding for the program is denied or decreased; or if there is a material alteration in the program for which the funds were initially provided; 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.
- (b) 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. 2-735. Objections to city staff response or bias claims regarding bias or bid or RFP prior to award.**

Any bidder or potential bidder or proposer or potential proposer who believes that the procurement administrator or other city staff have not appropriately responded to its questions, requests for information, clarification or interpretation regarding a bid or request for proposals 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 writing in that regard to the finance director or his or her designee for his or her consideration.

**Sec. 2-736. Appeals of procurement administrator decisions regarding bids.**

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. 2-737. 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.

**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

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.

**Sec. 2-739. Proposers conference for RFPs.**

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. 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. 2-740. City's response to proposer questions and requests for information, clarification and interpretation; issuance of addenda to RFP.**

The city's procurement administrator shall respond in writing to all questions or requests for information, clarification and interpretation presented to the city as provided in section 2-738, or presented at a proposer's conference. Such written responses shall be directed to all known proposers who have attended a proposer's conference, if held, or submitted such requests, or have responded to the procurement division with interest in the request for proposals. 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. 2-741. 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 highest scoring 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 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 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 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. 2-742. 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.**

- (a) *Opportunity for proposers to appeal evaluation and selection committee recommendation as to selection of the highest scoring 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 objection, 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. If the appeal will be determined on the basis of the record, the city manager or hearing officer may require the evaluation and selection committee to provide a written response to the appeal objections within five (5) business days of such request. A copy of such committee response shall be sent by mail or email to the appealing proposer on the same date as provided to the city manager or hearing officer. The award of a contract shall be deferred pending the outcome of the appeal.
- (c) 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 appealing proposer and all competing proposers shall be given written notification of the date of the council meeting at which the recommendation of the evaluation and selection committee will be considered by the city council.

The city manager's or hearing officer's decision shall be considered final.

- (d) The appealing proposer or city aggrieved by the decision made by the city manager or a hearing officer may challenge whether the city manager or hearing officer exceeded proper jurisdiction or otherwise acted illegally by commencing a certiorari action in the district court for Polk County, Iowa. The petition to initiate a certiorari action must be filed within 30 days after the entry of the final determination unless an extension of time is allowed by the reviewing court pursuant to Division XIV of the Iowa Rules of Civil Procedure. The city manager is hereby authorized to initiate a certiorari action on behalf of the city when the city manager, in consultation with the city attorney, deems it necessary and appropriate.
- (e) The filing of an action in the district court challenging the final determination of the city manager or hearing officer does not automatically stop the city from awarding the contract. Unless the city has been served with an order from the district court directing otherwise, the city may proceed with awarding the contract.

**Sec. 2-743. 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.

**Secs. 2-744--2-765. Reserved.**

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. 17- 2083), passed by the City Council of said City at a meeting held December 4, 2017 signed by the Mayor on December 4, 2017 and published and provided by law in the Business Record on December 22, 2017. Authorized by Publication Order No. 10205.

Diane Rauh, City Clerk