

ORDINANCE NO. 16,235

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 Section 2-703, relating to the definition of services to include an exception for public improvements as defined in Iowa Code Chapter 26A and by amending Sections 94-1, 94-196, and 94-197, relating to public improvement bids under Iowa Code Chapter 26.

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, by amending Section 2-703, relating to the definition of services to include an exception for public improvements as defined in Iowa Code Chapter 26A and by amending Sections 94-1, 94-196, and 94-197, relating to public improvement bids under Iowa Code Chapter 26, as follows:

Sec. 2-703. Definitions.

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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 or Iowa Code Chapter 26A.

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. 94-1. Applicability.

The provisions of articles II through X of this chapter shall apply to street and sewer improvements constructed and paid for in whole or in part by special assessments levied pursuant to I.C. ch. 384. The provisions of this article shall apply to all construction contracts entered into by the city for public improvement projects within the city. The provisions of Article VII shall apply to all public improvement projects bid pursuant to Iowa Code Chapter 26 with an estimated total cost exceeding the competitive bid threshold established in accordance with Iowa Code Chapter 26. The provisions of Article XI shall apply to construction of public improvements constructed by other than the city.

Sec. 94-196. Opening of bids.

The city engineer or his or her designee shall preside at the public opening convened to open and announce the amount of the bids for public improvements bid pursuant to Iowa Code Chapter 26 with an estimated total cost exceeding the competitive bid threshold established in accordance with Iowa Code Chapter 26. The sufficiency and compliance of the bid security to the bid requirements shall be determined before the bid is opened. Those bids submitted with insufficient or

noncompliant bid security shall not be opened, read or announced. After the bid is opened, it shall be reviewed by the engineering representative for its conformity with the city's invitation to the bidders and bid requirements. Thereafter all bids determined to be sufficient shall be read by the engineering representative. The reading of a bid or the reading of a bid under advisement shall not operate as a waiver of any defects or deficiencies in the bid or in the bid security, and the city council may reject any bid if it is determined prior to the council's acceptance thereof that the bid or bid security is insufficient. The bid tabulation submitted to the city council shall include a brief description of such defect or irregularity. The city council may thereafter waive any and all such defects or irregularities upon determining such waiver to be in the best interest of the city.

Sec. 94-197. Tie low bids.

If identical low bids are received on a given public improvement project bid pursuant to Iowa Code Chapter 26 with an estimated total cost exceeding the competitive bid threshold established in accordance with Iowa Code Chapter 26, both or all by bidders deemed to be responsible, award of the contract will be determined by toss of a coin if both or all of the identical low bidders concur in advance to such resolution. Failing such total concurrence by the time of the first meeting of the council following receipt of bids, the council may either reject all bids or award the contract based upon its determination of which bidder is the most responsible following notice to the identical low bidders and hearing before the council. This section shall not be controlling in those areas where a different type of resolution of tie bids is required by the source or manner of funding of all or a part of the costs of a project.

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

FORM APPROVED: Kathleen Vanderpool, Deputy 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. 23-0550), passed by the City Council of said City at the meeting held on April 10, 2023 and signed by the Mayor on April 10, 2023 and published and provided by law in the Business Record on April 28, 2023. Authorized by Publication Order No. 12280.

Laura Baumgartner, City Clerk