



# **PURCHASING POLICY MANUAL**

**DEPARTMENT OF FINANCE  
DIVISION OF PURCHASING**

**August 16, 2019**

**PURCHASING POLICY MANUAL**

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## **SECTION 1 – General Provisions**

### **1:101 Purposes**

1. Interpretation. This manual shall analyze and be applied to promote its underlying purposes and policies. Should any discrepancies be found to exist between this manual and Iowa State Code or City ordinance (Article 2.12), the code or ordinance shall take precedence.
2. Purposes and Policies. The underlying purposes and policies of this manual are:
  - A. To simplify, clarify and interpret the ordinance governing the purchasing of supplies, services and capital equipment by the City of Davenport.
  - B. To permit the continued development of procurement policies and practices.
  - C. To provide for increased public confidence in the procedures followed by the City in public procurements.
  - D. To ensure the fair and equitable treatment of all firms and individuals who deal with the purchasing system of the City.
  - E. To provide increased economy in City purchasing activities and maximize to the fullest practicable extent the purchasing value of public funds.
  - F. To foster effective broad-based competition within the free enterprise system of qualified integrity.
3. Singular, Plural and Gender Rules. In this manual, unless the context requires otherwise:
  - A. Words in the singular number include the plural, and those in the plural include the singular.
  - B. Words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.
4. User Department Responsibilities. Although the City of Davenport’s purchasing function is highly decentralized, all departments are required by ordinance to use the services of the Purchasing Division and are responsible for an important part of the process. Departmental responsibilities are listed below for guidance.
  - A. Determine the quality and quantity of supplies, materials and equipment needed, and the delivery date required.
  - B. Anticipate and requisition requirements giving accurate description of article(s) required in sufficient time for purchasing items on a competitive basis when required.
  - C. Receive and inspect item(s) delivered direct by vendor and refuse shipments that fail to meet purchase order contract.
  - D. Handling all emergency purchases, and declarations of surplus property, in accordance with established procedures.
  - E. Cooperate with Purchasing in establishing standard specifications for supplies, materials, and equipment.
5. Availability of Public Purchasing Records. Purchase orders, invitations to bid, summary of bids and other purchasing information of a public nature shall be available for inspection upon verbal or written request to the Purchasing Manager or designee during normal working hours in the Purchasing Division.

Notices of formal invitations to bid or requests for proposals shall be posted on the City of Davenport's ebidding system and on the City website (www.cityofdavenportiowa.com).

Bid results shall be posted on the City of Davenport's ebidding system and shall also be posted on the City's website.

Every courtesy shall be extended to vendors seeking information or assistance relating to the City's purchasing needs.

All information relative to bids or contracts will be made available to vendors upon request except request for proposal information while under review or negotiations.

6. Definitions in Manual

Administrator:	City Administrator or designee
Bidder:	Any firm, individual, corporation, agent, or company who may desire to offer a quote for supplies being purchased by the City of Davenport or who wants to purchase supplies offered for sale by the City of Davenport
City:	City of Davenport, County of Scott, State of Iowa
Clerk:	Any clerk assigned to Purchasing
Council:	Council of the City of Davenport
Finance Director:	Director of Finance or designee
Manager:	Purchasing Division Manager or designee
Manual:	Shall mean wholly, or any part thereof, of the Purchasing Policy Manual
Mayor:	The Mayor of the City of Davenport
Ordinance:	Shall mean ordinance Article 2.12 of the City Code of Davenport
Purchasing:	Purchasing Division
Purchasing:	The act of purchasing
Shall or Duty:	Means mandatory
Supplies:	Any material, equipment, property, or services of value to be purchased or sold by the City of Davenport

7. Forms to be Used to Implement Purchasing Function

Requisition	Bid/RFP Request	Request for Quote
Contract	Purchase Order	DBE Forms
	Statement of Intent	Invitation to Bid
Request for Proposal	Non-collusion Affidavits	Request for Information
Request for Qualifications	Supplier Registry File	Specifications/Plans
Budget/CIP Budget	Instructions to Bidders	Terms and Conditions
General Contract Conditions	Council Action Document	Bid Tabulation
RFP Response Tabulation	Affirmative Action Form	Bidder Status Form

8. Records to be maintained. The following is a list of records and forms that shall be maintained on a current basis by Purchasing for a period of years in accordance with State, County, City, and other appropriate laws.

1. Bidders Lists
2. Commodity Codes
3. Emergency Purchase Records
4. Sole Source Purchase Records
5. General Correspondence
6. Invitations to Bid/Requests for Proposals documents and results of all such solicitations as required by ordinance or policy manual
7. Purchase Orders
8. Vendor Registrations
9. Bid Saving Records
10. Other records as deemed necessary for maintenance of information as required by ordinance or policy manual

These current files shall be readily available to the individual access of the City Administrator or his designee.

### **1:102 Supplementary General Principles of Law Applicable**

Unless displaced by Article 2.12 of the City ordinance, the principles of law and equity, including the uniform commercial code of the State of Iowa, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake or bankruptcy shall supplement the provision of City ordinance and this manual.

### **1:103 Requirement of Good Faith**

This manual requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.

### **1:104 Application of this Manual**

General Application. This manual shall apply to every expenditure of public funds irrespective of their source, including federal assistance monies except as otherwise stated in Section 11.301 (Compliance with Federal Requirements) by this City. Except that this manual shall not apply to either grants or contracts between other governments except as stated in Section 10 (Intergovernmental Relations). This manual shall also apply to the disposal of all City surpluses. Nothing in this manual shall prevent any City agency from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

### **1:201 Documentation**

Written documentation required by Article 2.12 of City ordinance or this manual shall be retained in files of the Purchasing Division.

### **1:301 Definitions**

The words defined in this section shall have the meanings set forth below whenever they appear in this manual unless:

- ✓ The context in which they are used clearly requires a different meaning; or
- ✓ A different definition is prescribed for a particular section or provision.

**‘Business’** means any corporation, partnership, individual, sole proprietorship, Joint Stock Company, joint venture or any other private legal enterprise.

**‘Capital Equipment’** shall mean those items that are non-recurring purchases costing more than \$5,000 that have a projected life span of over one year. They must be recorded as an asset of the department and added to the fixed asset inventory and reported to the City’s insurance carrier.

**‘Change Order’** means a written order directing a contractor to make changes under that clause of the contract, which allows the City to order changes without consent of the contractor. Such a change order requires the written approval of the City Administrator or his designee if the amount of the order is under \$50,000. Change orders in excess of \$50,000 must be approved by City Council.

**‘Construction’** means the process of building, altering, renovating, improving or demolishing any public structure or building or other improvements of any kind to any public real property.

**‘Contract’** means any type of City agreement, regardless of its identification, for the procurement or disposal of supplies, services or construction. The term ‘contract’ when used in this manual shall not include employment agreements or collective bargaining agreements.

**‘Contract Modification’** means any written alteration approved by the City Administrator or his designee, in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

**‘Contractor’** means any person having a contract with the City of Davenport.

**‘Date’** means recorded information regardless of form or characteristic.

**‘Designee’** means a duly authorized representative of a person holding a superior position.

**‘Director’** means the person holding the position created in Article 2.12 of City ordinance creating the Purchasing Division under the Department of Finance.

**‘Employee’** means an individual drawing a salary from the City of Davenport whether elected or not and any non-compensated individual performing personal services for the City.

**‘Government Body’** means any department, commission, council, board, bureau, committee or agency of the City of Davenport.

**‘Grant’** means assistance furnished by the City, whether financial or otherwise, to any person to support a program authorized by the City Council. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a Grant, but a procurement contract.



***‘May’*** denotes the permissive.

***‘Person’*** means any business, individual, union, committee, club, other organization, or group of individuals.

***‘Procurement’*** means buying, purchasing, renting, leasing, or otherwise acquiring any equipment, product or service.

***‘Purchasing Division’*** means the division of the Finance Department of the City of Davenport, which is authorized by Code and this Manual to enter into contracts.

***‘Purchasing Manager’*** means the person duly authorized to enter into and administer contracts and make written determinations to the Finance Director respectively. The term also includes an authorized designee acting within the limits of authority.

***‘Regulation’*** means the City Council, City Administrator or Finance Director’s statement having general or particular applicability and future effect designed to implement, interpret, or prescribe procedure, which has been promulgated in accordance with Article 2.12 or this manual.

***‘Services’*** means the furnishing of labor, time, or effort by a contractor (not involving the delivery of a specific end product other than reports which are merely incidental to the required performance).

***‘Shall’*** denotes the imperative.

***‘Supplies’*** means all consumable items including printing that has a normal usable life of less than one year.

***‘Using Agency’*** means any department, board or commission of the City Council, which utilizes any supplies, capital equipment, services or construction procured under Article 2.12 of the City Municipal Code or this manual.

## **1:401 Public Access to Procurement Information**

Procurement information shall be a public record to the extent provided by State statute and City ordinance.

## **SECTION 2 – Procurement Organization**

### **2:101 Authority of the Purchasing Manager**

The Purchasing Division has been created as a division of the Finance Department by ordinance 80-1008 Article 2.12 of the municipal code of the City of Davenport and shall be guided and regulated by said ordinance and the procedures of this policy manual.

Principal Contracting Officer of the City. Purchasing Manager or designee shall serve as the central procurement officer of the City of Davenport.

Power to Adopt Operational Procedures. The Purchasing Manager or designee shall have the power to adopt operational procedures consistent with the provisions of City ordinance, with concurrence of the Finance Director. The Purchasing Manager or designee shall adopt operational procedures governing the internal functions of the Purchasing Division.

Duties. Duties of the Purchasing Manager, except as otherwise specifically provided by State, Federal law or City ordinance, shall be in accordance with Article 2.12 of the City Code and the provisions of this manual. He shall:

1. Procure or supervise the procurement of all equipment, supplies, services, and construction required by the City of Davenport except as specified in ordinance.
2. Exercise general supervision and control over all inventories of supplies and equipment belonging to the City except as specified in ordinance.
3. Oversee the selling, trading or otherwise disposing of surplus supplies and equipment belonging to the City except as specified in ordinance.
4. Establish and maintain programs for the inspection, testing, and acceptance of supplies, services and construction.

### **2:201 Authority to Contract for Certain Services**

General Authority. For the purpose of procuring the services of accountants, clergy, physicians, lawyers, and dentists as defined by the ordinance of the City of Davenport, any agency of this City may act as a purchasing agent and contract on its own behalf for such services subject to approval of the City Administrator or his designee and applicable laws and ordinances. The City agency shall consult with the Purchasing Manager when procuring such services.

**2:202 Exceptions.** Unless otherwise ordered by the City Administrator or his designee, the following supplies, services, and construction need not be procured through the Purchasing Division, but shall nevertheless be procured by the appropriate agency subject to all applicable Federal, State, and City statutes:

- A. Library procurements including published books, maps, periodicals, and technical pamphlets.
- B. Architect-Engineer and land surveying services as defined in Section 5:101.
- C. Works of art for museum or public display.

See section 2.12.130 of ordinance for contracts that are exempt from competitive bidding.

### **2:301 Collection of Data Concerning Public Procurement**

The Purchasing Manager, in concurrence with the Finance Director, shall prepare statistical data concerning the procurement, usage, and disposition of all supplies, services, and construction, and employ such trained personnel as may be approved by the City Council, as necessary to accomplish this function. All using agencies shall furnish such reports as the Purchasing Manager may require concerning usage, needs and stocks on hand. The Purchasing Manager shall have the authority to prescribe forms to be used by the using agencies in requisitioning, ordering and reporting of equipment, supplies, services and construction.

## **2:401 Purchase Requisitions and Approvals**

Definition: A “purchase requisition” is a standard form used by all agencies as their request to the Purchasing Division to procure goods or services.

Every purchase made by Purchasing for an agency shall originate on a purchase requisition. Exception: Emergency purchases, Section 3:208 (Emergency Purchases). A list of approval signatures to be used on requisitions shall be supplied to Purchasing Division. No requisitions will be honored without system approvals.

Individual purchases shall be subject to the following dollar amount approval:

1. Purchases *up to \$3,000* shall require the approval of the Director of the requesting agency or his designee;
2. Purchases *in excess of \$3,000 but not exceeding \$25,000* require the approval of the Finance Director or his designee;
3. Purchases *in excess of \$25,000 but not exceeding \$50,000* require the approval of the City Administrator or his designee;
4. Purchases *exceeding \$50,000* in value require city council approval.

The above pertains to budgeted items for which there are current appropriations. All non-budgeted items shall require Council approval.

Requests for regular purchases will not be considered unless submitted as standard purchase requisitions.

The following information must be included in the purchase requisition:

1. Date, department, address, phone number of person making requisition, and approval signature(s).
2. Accounting fund coding.
3. Detailed description of goods or services requested, including specifications or usage intended and other applicable information. Specifications shall be written in a manner that will insure maximum competition when bidding.
4. Delivery date required. The delivery date should allow a reasonable time for purchase in compliance with regulations of purchasing ordinance. Requirements must be anticipated and ordered at the earliest possible date.
5. Delivery point.
6. Special instructions for Purchasing shall be entered as “General Notes.”
7. If substitute, or “equal”, or “equivalent” is not acceptable, the requisitioner must substantiate the non-acceptability, with valid reasons. (Personal preference is not a valid reason.)
8. At least thirty (30) days should be allowed from requisition date for delivery. Purchase requisitions from all agencies will be grouped or consolidated when possible and bid requests issued. After receipt of bids, awards will be made, and purchase orders issued.

The Purchasing Division and the Requisitioner shall work together to insure competition in every possible case. Any dispute between Purchasing and the agency may be referred to higher authority regarding a difference of opinion in relation to specifications.

## **2:402 Processing of Purchasing Requisition**

Departments shall follow the appropriate method of purchase as established by the Purchasing Division to obtain the best possible competitive pricing.

The requisitioner shall determine which established method of purchasing (such as verbal quotes \$3,000 to \$10,000, written quotes from \$10,000 - \$50,000, over \$50,000 Invitation to Bid, Request for Proposal, RFQ, RFI, or emergency) shall be used. All requisitions received by Purchasing shall be reviewed by the Purchasing Manager or his designee to insure that it is complete and contains all necessary data. The Manager will hold requisitions that are inadequate and shall request additional information from originator to provide corrective action required.

## **2:501 Purchase Orders**

Definition: A written purchase order is an offer to purchase, an acceptance of an offer to sell, and/or a confirmation between two or more competent parties. The purchase order is the most important of all purchasing documents. **The purchase order is a legal document and upon acceptance by a vendor, becomes a contract.**

It is the duty of all Purchasing Division personnel involved in the preparation and issuance of purchase orders to exercise precision and clarifications in the contents of a purchase order. All legal questions initiated by Purchasing Division personnel for resolution by the legal staff, shall be in writing over the signature of the Purchasing Manager.

It is important to note that conditions appearing on purchase orders, as well as written and attached and so noted supplemental documents on the order, are part of the contract. Verbal instructions will be discouraged except in cases of emergency. All such verbal instructions must be confirmed in writing without delay. Verbal discussions shall not be binding.

Information required on a purchase order:

1. City's name and address
2. Purchase order number and General Ledger accounting code and encumbrance information
3. Requisition number
4. Bid number or method of purchase used
5. Agency for whom goods or services are required
6. Supplier's name and address
7. Individual's name to which order is directed, if applicable
8. Shipping instructions
9. Terms of payment and cash discounts
10. F.O.B. points
11. Date of shipment or delivery required
12. Quantity required
13. Unit and total pricing
14. Description of materials or services required
15. Invoicing instructions if different from printed terms and conditions
16. Cancellation provisions
17. Authorized signature

18. Printed standard terms and conditions as shown on the face of purchase order form
19. Copies of quotes obtained should be attached
20. Any additional information necessary to clarify intent of needs of the City of Davenport or to prevent possible misunderstandings

## **2:502 Division of Requirements**

Agencies and Purchasing shall not, in any case, divide requirements to evade the monetary limits imposed by law.

## **2:503 Purchase Order – Distribution of Copies**

### 1. Distribution of Purchase Order Copies

An electronic copy shall be retained by the Purchasing Division as a permanent file copy with backup documentation when required. If requested by the vendor, a copy of the Purchase Order, signed by the Purchasing Manager will be mailed or emailed to the vendor.

### 2. Records to be Maintained Following Purchase Order Distribution

The Purchasing Division will maintain an electronic file of the Purchasing copies of all purchase orders issued in numerical order.

## **2:504 Advance Purchase Order**

Advance purchase order numbers shall not be issued except as outlined in this manual, covering emergency orders. Section 3:207 (Emergency Procurement), 3:208 (Emergency Purchases), 3:209 (Administrative Emergency), 3:210 (Minor Emergency or Rush Purchases).

## **2:701 Purchasing Card**

It is the policy of the City of Davenport to have a Purchasing Card (P-card) Program. This program is intended for online purchases; to order products on line from vendors that will not accept a Purchase Order, for registration for conferences or classes, and airline reservations online. Specific processes and procedures have been set forth in the Purchasing Card Program Policy.

## **2:801 Receiving Report**

When the vendor has delivered the merchandise, the receiving department should inspect the shipment for the following:

1. Shipment is complete
2. There is no apparent damage. Broken or damaged cartons should be opened and merchandise inspected before signing acceptance of delivery.
3. Merchandise must comply with specifications on the order.

When receiving department is satisfied that merchandise is acceptable, they should receive the items in the system and forward a copy of the invoice to Accounting for invoice match-up and payment. Receiving department shall be responsible for maintaining receiving report files.

### **SECTION 3 – Source Selection and Contract Formation**

#### **3:101 Definitions of Terms Used in this Section**

1. *'Cost-Reimbursement Contract'* means a contract under which a contractor or supplier is reimbursed for costs which are allowable and allocatable in accordance with the contract terms and the provisions of all laws and ordinances, and a fee, if any.
2. *'Established Catalogue Price'* means the price included in a catalog price list, schedule or other form that:
  - A. Is regularly maintained by a manufacturer or contractor.
  - B. Is either published or otherwise available for inspection by customers.
  - C. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.
3. *'Invitation for Bids'* means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed bids.
4. *'Purchase Description'* means the words used in a solicitation to describe the equipment, supplies, services or construction to be purchased and includes specifications attached to or made a part of the solicitation.
5. *'Request for Proposals'* means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed proposals.
6. *'Responsible Bidder'* or *'Offeror'* means a person or firm who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
7. *'Responsive Bidder'* means a person or firm who has submitted a bid (or proposal) which conforms in all material respects to the solicitation for bids or proposals.

#### **3:201 Methods of Source Selection**

Unless otherwise authorized or as provided in City ordinance, all City contracts shall be awarded by using one of the following methods:

- Informal Request for Quotes (3.202)
- Competitive Sealed Bidding (3.203)
- Competitive Sealed Proposals (3.204)
- Competitive Sealed Qualifications (3.205)
- Sole Source Procurement (3.206)
- Emergency Procurements (3.207)

Emergency Purchases (3.208)

Administrative Emergency (3.209)

Minor Emergency or Rush Purchases – Maintenance, Repair, and Operating Supplies (3.210)

Competitive Selection Procedures for Services Specified in Section 2:202 ‘Authority to Contract for Certain Services’ (3.211)

Architect-Engineer and Land Survey Services (5.501)

### **3:202 Informal Request for Quotes**

1. **Conditions for use.** Contracts shall be awarded by a request for quotes when the procurement is valued at over \$3,000 but less than \$50,000 except as provided by ordinance. Verbal quote are acceptable up to \$10,000, between \$10,000 and \$50,000 written quotes must be obtained.
2. **Request for Quotes.** A request for quotes shall be issued by the requesting department via the electronic bidding system and the Purchasing Division. It will notify three or more vendors and shall include a purchase description, and all contractual terms and conditions applicable to the procurement. Quotes must be submitted in writing.
3. **Acceptance and Evaluation of Quotes.** Vendor quotes shall be submitted in writing and shall be unconditionally accepted without alteration or correction. Quotes shall be evaluated based on the requirements set forth in the request for quotes. Requirements may include inspection, demonstration, quality standards, workmanship, delivery and suitability for a particular purpose. Copies of all quotes received shall be maintained for inclusion in the purchase file.
4. **Awards.** The contract shall be awarded by written notice to the vendor that submits the low quote and whose quote meets the requirements and criteria set forth in the request for quotes. The purchase order will not be issued until copies of the quotes are received by the Purchasing Division. If the award is for a service or construction project, a written contract will be written by the Purchasing Division. All signatures must be obtained prior to issuing a purchase order. A sales tax exempt certificate will be issued for the purchase of materials being used.

### **3:203 Competitive Sealed Bidding**

1. **Conditions for use.** Contracts shall be awarded by competitive sealed bidding for procurements with a value exceeding \$50,000 except as otherwise provided in Section 3:201 or by ordinance.
2. **Invitation for Bids.** An invitation for bids shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement.
3. **Public Hearing.** Public hearing processes set forth and as amended in the Federal Rules or Code of Iowa will be followed when applicable. Notice of the public hearing shall be published as required.
4. **Public Notice.** Public notice of the invitation for bids shall be given a reasonable time prior to the date set for the opening of bids or as required by state code. Such notice may include, but not be limited to, publication in a newspaper, direct mail or emailed from a vendors list comprised of businesses that have expressed a desire to be placed on said vendors list, and posting to City

website, or per Iowa Code advertising with Master Builders of Iowa. All notifications shall allow a reasonable time for vendors to prepare their bid prior to bid opening.

5. ***Bid Opening.*** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The bid amounts, and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection.
6. ***Bid Acceptance and Bid Evaluation.*** Bids shall be unconditionally accepted without alteration or correction. Bids shall be evaluated based on the requirements set forth in the invitation for bids. Requirements may include inspection, demonstration, quality standards, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used in these circumstances. No other criteria may be used in bid evaluation if not set forth in the invitation for bids.
7. ***Correction or Withdrawal of Bids.*** Correction or withdrawal of inadvertently erroneous bids may be made prior to the posted bid opening time only. Any changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall not be permitted after the bid opening. When it is apparent that an error in a bid has been made and could affect the performance of the bidder or create an enforcement problem for the City, then the City Administrator or his designee may (based upon a complete written report and recommendation of the Finance Director) allow a low bid to be recalled by the bidder and cause an award to be made to the next lowest responsible bidder.
8. ***Tie Bids.*** In the event that two or more bidders submit identical bids, the winner shall be determined by following all applicable preferences under state law and city ordinance. If after all applicable preferences are applied, only one bidder remains, the sole remaining bidder will be awarded the contract. If a tie still exists, all tied bidders will draw straws, alphabetically by vendor name, and the bidder drawing the longest straw will be awarded the contract.
9. ***Awards.*** The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. If all bids for a construction project exceed available funds as certified by the Finance Director:
  - A. But the responsive and responsible bid does not exceed such funds by more than five (5) percent, then the Purchasing Manager or City Engineer is authorized in such situations where time and economic consideration preclude re-solicitation of a bid reduced in scope, to negotiate with the lowest responsive and responsible bidder, adjustments of the bid price and changes in the bid requirements. Such action must be submitted with full documentation to the City Administrator for final approval.
  - B. And the difference is greater than (5) percent, the project shall be rebid if no additional funding is available from a related source.
10. ***Contractor Evaluation.*** Contractors awarded contracts with the City may undergo a standardized evaluation upon completion of the work. The contractor's eligibility status for



being awarded future projects will be governed by current policies adopted by the Davenport City Council which will include, but not be limited to, these evaluation results. The Contractor will be sent a copy of their evaluations.

11. **Multi-Step Sealed Bidding.** When it is considered impractical by the Purchasing Manager, in concurrence with the Finance Director, to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

### **3:204 Competitive Sealed Proposals.**

1. **Conditions for Use.** When the Purchasing Manager determines that it is either not practicable or advantageous to the City to procure certain types of equipment, supplies, services or construction by competitive sealed bidding, a contract may be entered into by competitive sealed proposals.
2. **Request for Proposals.** A request for proposals shall be issued and shall include a description of the goods or services being requested and all terms and conditions that apply to the procurement.
3. **Public Notice.** Public notice of the request for proposals shall be given in the same manner as provided in Section 3:203 (3) (Competitive Sealed Bidding, Public Notice).
4. **Receipt of Proposals.** Proposals shall be opened so as to avoid disclosure of contents to competing offerors for the purpose of negotiation. A list of respondents shall be prepared in accordance with the terms of this manual and proposals shall be open for public inspection after contract award.

**A. Evaluation Method.** The request for proposals specifications shall state the selection committee members and will list the evaluation criteria and the relative importance of each factor.

**B. Discussion with Responsible Offerors and Revisions to Proposals.** As provided in the request for proposals and under strict compliance with terms of this manual, discussions may be conducted with one or more responsible offerors who submit proposals determined by the Purchasing Manager to be reasonably qualified for the contract award, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be granted fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Such revisions may be permitted after submission and prior to award

for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. Should discussions and revisions to proposals take place, then a full written report shall be submitted to the Finance Director along with the recommendation of award.

**C. Award.** Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth

in the request for proposals. No other factors or criteria shall be used in the selection process. The contract file shall contain the rating forms completed by each member of the selection committee used as the basis on which the award is made.

### **3:205 Competitive Quotations**

1. **Conditions for use.** Contracts may be awarded by semi-formal quotation process when the procurement is valued at over \$3,000 but less than \$50,000, except as provided by ordinance, in **emergency situations** when timing is an issue. A request to use this method must be made in advance to the Finance Director who will review and approve each request on a case by case basis.
2. **Competitive Quotation.** A request for quotations shall be issued to three or more vendors and shall include a purchase description, all contractual terms and conditions applicable to the procurement, and a site visit.
3. **Quote Deadline.** The time, place, and manner for filing quotes shall be designated, with vendors submitting quotes via the City's electronic submission system.
4. **Awards.** The contract shall be awarded with reasonable promptness by written notice to the vendor submitting the lowest responsive and responsible quote, or all quotes may be rejected.

### **3:206 Sole Source Procurement**

A purchase order may be issued for a piece of equipment, supply, service, or construction item without competition when the requesting agency has provided in writing that there is only one source for the required equipment, supply, service or construction item and the Purchasing Manager has reviewed the request.

### **3:207 Emergency Procurements**

Notwithstanding any other provisions of this manual, the director of any using department may declare an emergency situation when there exists a threat to public health, welfare, or safety as defined in this manual. All emergency procurements shall be made with such competition as is practicable under the circumstances. An Emergency Purchase request form should be completed and signed by the designated staff. A written determination of the basis for the emergency and for the selection of the vendor signed by the department head of the using agency shall be included in the contract file.

### **3:208 Emergency Purchases**

Agencies shall be permitted to make emergency purchases in those situations where failure to do so could result in an immediate and apparent loss to the City of Davenport.

If and when there is a properly declared "Emergency", purchases can be made without taking competitive bids. However, even then, informal quotes should be obtained when practicable.

“Emergency purchase” procedures should be followed when those in authority make a “declaration of emergency”. An emergency declaration must be made in writing or confirmed within eight (8) working hours.

### **3:209 Administrative Emergency**

An administrative emergency may be considered to exist when, due to unforeseen circumstances or conditions beyond the reasonable control of using agencies, accidents or failure of mechanical equipment or contractual services occur, which are essential to protect and preserve the interests of the community and its inhabitants, the proper functioning of the government and the efficient rendering of public services. This may include the breakdown of machinery or vehicles.

In cases of an Administrative Emergency, as declared by a department director and approved by the City Administrator, the appropriate department director is empowered to make such purchases as necessary. However, the department is requested to fully utilize the services of the Purchasing Division, which will give immediate positive response to such needs.

In every case involving an emergency purchase, the department must submit, no later than the following regular business day, a purchase request, detailing information regarding the emergency purchase and a statement defining the Administrative Emergency as approved by the City Administrator.

The Purchasing Division shall maintain current records covering every emergency purchase and submit a record of all emergency purchases to the Finance Director upon request. The record shall detail each emergency purchase over one thousand dollars.

### **3:210 Minor Emergency or Rush Purchases – Maintenance, Repair & Operating Supplies**

In some areas, the work is of such a nature that it is not always possible to anticipate requirements. This is particularly true in areas of certain repair work. In such cases, using departments will be able to pick up or receive immediate delivery. The Purchasing Division will cooperate with using departments in this area to expedite such purchases.

1. Work requiring supplies or parts should be planned in advance and the material requirements determined.
2. Required supplies are requested by telephone or in person and justification given. Minor rush purchases can only be made with authorization of the Purchasing Division.
3. The use of minor rush purchase procedures will be discouraged in every manner possible consistent with meeting essential purchasing requirements.
4. Minor rush purchases amounting to more than \$1,000.00 are subject to approval of the Purchasing Manager. They may require such purchases be handled as an Administrative Emergency purchase.

### **3:211 Competitive Selection Procedures for Services Specified in Section 2:201 (Authority to Contract for Certain Services)**

1. Conditions for Use. The services specified in Section 2:201 (1) (Authority to Contract for Certain Services – General Authority) shall be procured in accordance with this section, except as authorized under Section 3:206 (Sole Source Procurement) or Section 3:207 (Emergency Procurements) or as specified in City ordinance.
2. Statement of Qualifications. Persons engaged in providing the types of services specified in Section 2:201 (1) may submit statements of qualifications and expressions of interest in providing such types of services. The Purchasing Manager may specify a uniform format for statements of qualifications. These statements of qualifications may be amended as needed by filing a new statement.
3. Public Announcement and Form of Request for Proposals. The Purchasing Division shall give notice of the need for such services through a request for proposals. The request for proposals shall describe the services required, list the type of information required of each offeror, state the relative importance of particular qualifications, and specify the deadline for proposals.
4. Discussions. The Purchasing Manager or City Engineer (or designees) may conduct discussions with any offeror who has submitted a proposal or that has a current statement of qualifications on file to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals by another offeror.
5. Award. Negotiations of compensation shall take place with the offeror ranked number one, based on the evaluation factors set forth in the request for proposals. If compensation determined to be fair and reasonable cannot be agreed upon with the offeror ranked number one, the negotiations will be formally terminated. If proposals were submitted by one or more offerors determined to be qualified, negotiations may be conducted with another offeror(s), in order of their respective qualification ranking. The contract shall be awarded to the qualified offeror with whom compensation determined to be fair and reasonable has been negotiated.

### **3:301 Cancellation of Invitation for Bids or Request for Proposals.**

An invitation for bids, a request for proposals or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part when it is determined to be in the best interests of the City. The reason, therefore, shall be made part of the contract file.

### **3:401 Responsibility of Bidders and Offerors**

Determination of Non-Responsibility. A written determination of non-responsibility of a bidder or offeror shall be made in accordance with the terms of this manual and ordinance. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

Right of Non-disclosure. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside the Purchasing or Engineering Office without prior written consent by the bidder or offeror.

### **3:402 Prequalification of Suppliers**

Prospective suppliers may be prequalified for particular types of equipment, supplies, services or construction. Solicitation mailing lists of potential vendors shall include, but shall not be limited to, such prequalified suppliers.

### **3:403 Cost or Pricing Data**

1. Contractor Certification. A contractor shall, except as provided in subsection (3) of this section, submit cost or pricing data and shall certify that, to the best of his knowledge and trust, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date, prior to the date of:
  - A. The pricing of any contract awarded by competitive sealed proposals Section 3:204 (Competitive Sealed Proposals) or pursuant to the sole source procurement authority Section 3:206 (Sole Source Procurement), where the total contract price is expected to exceed an amount established by the Finance Department.
  - B. The pricing of any change order or contract modification that is expected to exceed an amount established by the Finance Department.
2. Price Adjustment. Any contract change order or contract modification under which a certificate is required shall contain a provision that the price to the City, including profit or fee, shall be adjusted to exclude any significant sums by which the City finds that such price was increased because the contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.
3. Cost or Pricing Data Not Required. The requirements of this section need not be applied to contracts:
  - A. Where the contract price is based on adequate price competition.
  - B. Where the contract price is based on established catalogue or market price.
  - C. Where contract prices are set by law.
  - D. Where it is determined in writing in accordance with regulations promulgated, this manual or ordinance may be waived, and the Purchasing Manager states the reasons for such a waiver in writing and secures the concurrence of the Finance Director.

### **3:501 Types of Contracts**

Subject to the limitations of this section and federal and state law, any type of contract, which will promote the best interest of the City, may be used; provided that the use of a cost-plus-a-percentage of cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such a contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the equipment, supplies, services or construction

required except under such a contract. Concurrence of the Finance Director in writing is required to be a part of the contract file.

### **3:502 Approval of Accounting System**

Except with respect to firm fixed price contracts, no contract type shall be used unless it has been determined by the Finance Director or his designee that:

- A. The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated.
- B. The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

### **3:503 Multi-Term Contracts**

1. Specified Period. A contract for supplies or services may be ascertained for any period of time deemed to be in the best interests of the City, unless otherwise provided by law, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation, and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for the succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof.
2. Determine Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:
  - A. That estimated requirements cover the period of the contract and are reasonably firm and continuing.
  - B. That such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in City procurement.
3. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled. The contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred, but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

### **3:601 Right to Audit Records**

1. Audit of Cost or Pricing Data. The City may, at the determination of the Finance Director or his designee, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to Section 3:403 (Cost or Pricing Data). Books and
2. records that relate to such cost or pricing data shall be retained by the contractor for three years from the date of final payment under the contract (unless a shorter period is otherwise authorized in writing by the Finance Director or his designee).
3. Contract Audit. All contracts shall entitle the City to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract (other than firm fixed-price

contract) relative to that contract or subcontract. Such books and records shall be maintained from the date of final payment, under a prime contract or a subcontract, for a period of three (3) years (unless a shorter period is otherwise authorized in writing by the Finance Director).

### **3:701 Finality of Determination**

The determinations required by Section 3:203 (6) (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards), Section 3:204 (7) (Competitive Sealed Proposals, Award), Section 3:206 (Sole Source Procurement), Section 3:207 (Emergency Procurement), Section 3:208 (Emergency Purchases), Section 3:209 (Administrative Emergency), Section 3:210 (Minor Emergency or Rush Purchases - Maintenance, Repair, or Operating Supplies), Section 3:211 (5) (Competitive Selection Procedures for Services Specified in Section 2:201), Section 3:401 (1) (Responsibility of Bidders and Offerors, Determination of Non-Responsibility), Section 3:403 (3) (Cost or Pricing Data, Cost or Pricing Data not Required), Section 3:501 (types of Contracts), Section 3:502 (Approval of Accounting System), and Section 3:503 (2) (Multi-Term Contracts, Determine Prior to Use), are final and conclusive as stated in this manual unless they are clearly erroneous, arbitrary, capricious, or contrary to federal, state law or city ordinance.

### **3:702 Reporting of Anticompetitive Practices**

When for any reason the Purchasing Manager shall suspect collusion or other anticompetitive practices among bidders or offerors, he shall notify the Finance Director of all relevant facts in writing.

### **3:703 Retention of Procurement Records**

All procurement records shall be retained and disposed of in accordance with record retention guidelines and schedules approved by the City Council and shall be made available upon request by proper authority.

### **3:704 Record of Procurement Actions Taken Under Section 3:206 (Sole Source Procurement) and Section 3:207 (Emergency Procurements).**

1. Contents of Record. The Purchasing Manager shall maintain records of all contracts made under Section 3:206 and Section 3:207 for a minimum of five (5) years. The record shall contain:
  - A. Department request and documentation.
  - B. Each vendor's name.
  - C. The amount and type of each contract.
  - D. A listing of the supplies, services or construction procured under each contract.
2. Annual Report Required. Copies of such reports shall be available to the Finance Director upon request. The records shall be available for public inspection.

## **SECTION 4 – Specifications**

*Every effort shall be made to properly prepare specifications.* Specifications shall define the item or service to be purchased.

Adequate specifications shall:

1. Be specific.
2. Accurately describe the items or services required.
3. Be worded simply, with clear meaning.
4. State intended usages with any requirements of exceptional nature.
5. Conform as nearly as possible to a nationally recognized standard description.
6. Be written to insure the greatest possible competition. Where possible, a minimum of three acceptably known or manufacturer's brands, available from a minimum of three different suppliers, shall be specified. This procedure is not, in any way, intended to eliminate or discourage other manufacturers of products of like merit.

The Purchasing Division's obligation to the City of Davenport and its suppliers is that the widest possible competition be encouraged, consistent with quality required by the using department.

### **4:101 Definition of Terms**

'Specification' means any description of the physical or functional characteristics, or of the nature of a type of equipment, supply, service, or construction item. Specifications may include a description of any requirement for inspection testing, or preparing a piece of equipment, supply, service, or construction item for delivery.

### **4:201 Duties of the Purchasing Division and Relationship with Using Department**

The Purchasing Division, in cooperation with the using agencies, shall govern the preparation, maintenance, and content of specifications for equipment, supplies, services and construction required by the City except as noted in City ordinance. The Purchasing Division shall prepare, issue, revise, maintain, and/or monitor the use of specifications for equipment, supplies, services, and construction required by the City and shall obtain the advice and assistance from using agencies in the process. The using agencies shall prepare the draft specification of its requirements that includes technical specifications and forward to the Purchasing Division.

### **4:202 Exempted Items**

Specifications for equipment, supplies, services, or construction procured under Sections 2:201 (Authority to Contract for Certain Services) and 2:202 (Exception), shall be prepared by using department in accordance with the provisions of this manual.

### **4:203 Maximum Practicable Competition**

All specifications shall seek to promote overall economy for the purpose intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive.



#### **4:204 Specifications Prepared by Architects and Engineers**

The requirements of this manual regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, inclusive, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts.

### **SECTION 5 – Construction Contracts**

#### **5:101 Definitions of Terms Used in this Section**

Architect-Engineer (A/E) and land surveying services are those professional services within the scope of the practice of architecture, professional engineering, or land surveying as defined by the laws of the State of Iowa.

#### **5:201 Selection of Methods of Construction Contracting Management**

1. Responsibility for Selection of Methods. The Purchasing Division, or Engineering Division when applicable, will evaluate as many alternative methods of construction management as it may determine to be feasible. The Division shall:
  - A. Set forth criteria to be used in determining which method of construction contracting management is to be used for a particular project;
  - B. Recommend in writing who shall be responsible for carrying out the construction project;
  - C. Execute and include in the contract file a written statement setting forth the facts that led to the selection of a particular method of construction management for each project.
2. Types of Construction Contracting Management. It is recognized that at least the following methods are currently being used for control and coordination of construction projects:
  - A. A single price contractor (including a turnkey or design-build contractor).
  - B. Multiple prime contractors managed by:
    - (1) A single price contractor (including a turnkey or design-build contractor);
    - (2) A construction manager;
    - (3) The City Engineer or his designee, or the City's Project Manager for the project.
3. Unacceptable Method of Construction Contracting Management. A contract clause that requires separate prime contractors to cooperate and coordinate with each other without central planning and a management coordinator is not considered an acceptable method of construction contracting management.
4. Contract Management Specified by Federal or State Law. Should federal or state law require by specific statute the method of managing a particular project, such statute shall prevail. A copy of such statute and written explanation shall be inserted in the project file.

### **5:301 Bid Security**

1. Requirements for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated to exceed \$100,000. Bid security shall be a bond provided by a surety company authorized to do business in the State of Iowa, or the equivalent in cash or a certified check. Nothing herein prevents the requirement of such a bond on construction contracts estimated to be under \$100,000 when the circumstances warrant.
2. Amount of Bid Security. Bid security shall be in an amount equal to at least 5% of the amount of the bid.
3. Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, with explicit instructions on how to submit the security and acceptable means of security, noncompliance requires the bid to be rejected.
4. Withdrawal of Bids. After the bids are opened, they shall be irrevocable for sixty days, or the period specified in the invitation for bids, except as provided in Section 3:203 (Competitive Sealed Bidding). If a bidder is permitted to withdraw his bid before award, no action shall be made against the bidder or the bid security.

### **5:302 Contract Performance and Payment Bonds**

1. When Required – Amounts. When a construction contract is awarded in excess of \$100,000, the following bonds or security shall be delivered to the City and shall become binding on the parties upon execution of the contract.
  - A. A performance bond satisfactory to the City, executed by a surety company authorized to do business in the State of Iowa, or otherwise secured in a manner satisfactory to the City, in an amount equal to 100% of the price specified in the contract.
  - B. A payment bond satisfactory to the City, executed by a surety company authorized to do business in the State of Iowa, or otherwise secured in a manner satisfactory to the City, for the protection of all personnel supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.
  - C. In addition, a maintenance bond may be required for some projects. Requirement will be specified in the bid documents including length of term, etc.
2. Reduction of Bond Amounts. The Finance Director, upon written recommendation from the Purchasing Manager or Director of the using department, may authorize the reduction of the performance and payment bonds to 50% of the contract price for each bond up to \$25,000.
3. Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of the City to require a performance bond for any project, or other security in addition to the stated bonds, or in circumstances other than specified in Section 5:302 (1) (When Required – Amounts).

### **5:303 Bond Forms and Copies**

1. Bond Forms. The Purchasing Division may provide the form for the bonds required by this section or a standard form issued by a bonding company is acceptable.
2. Certified Copies of Bonds. Any person may request and obtain from the City a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

### **5:401 Contract Clauses and Their Administration**

1. Contract Clauses. This manual shall allow for the inclusion in City construction contracts of clauses providing for adjustments in prices, time of performance, or other contractual provisions, as appropriate, and covering the following subjects:
  - A. The unilateral right of the City to order in writing:
    - (1) Changes in the work within the scope of the contract.
    - (2) Changes in the time of performance of the contract that do not alter the scope of the contract work.
  - B. Variations occurring between estimated quantities of work in a contract and actual quantities.
  - C. Suspension of work ordered by the City.
  - D. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site condition clauses promulgated by the City need not be included in a contract:
    - (1) When the contract is negotiated.
    - (2) When the contractor provides the site or design.
    - (3) When the parties have otherwise agreed with respect to the risk of differing site condition.
2. Price Adjustments
  - A. Adjustments in price pursuant to clauses promulgated under Subsection (1) of this Section shall be computed in one or more of the following ways:
    - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable.
    - (2) By unit prices specified in the contract or subsequently agreed upon.
    - (3) By the cost attributable to the events or situations under such clause(s) with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon by the City.
    - (4) In such other manner as the contracting parties may mutually agree.
    - (5) In the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clause(s) with adjustment or

profit or fee, all as computed by the City in accordance with applicable sections of this manual under Section 7 (Cost Principles) and subject to provisions of Section 9 (Legal and Contractual Remedies).

3. Additional Contract Clauses. The Purchasing Manager or City Engineer shall require the inclusion in City construction contracts of clause(s) providing for appropriate remedies and covering the following subjects:
  - A. Liquidated damages as appropriate.
  - B. Specified excuses for delay or nonperformance.
  - C. Termination of the contract for default.
  - D. Termination of the contract in whole or in part for the convenience of the City.
4. Modifications of Required Clauses. The Purchasing Manager or City Engineer may, with written confirmation from the City's legal counsel or as allowed by City ordinance, vary clauses for inclusion in any particular City construction contract, provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the instruction for bids or request for proposals.

#### **5:402 Fiscal Responsibility**

Every contract modification, change order, or contract price adjustment under a construction contract with the City in excess of \$1,500 shall be subject to prior written certifications of the Finance Director or his designee. In the event that the change results in the total project being over budget, the contract modification, change order, or adjustment in contract price shall not be executed until the Finance Director has authorized that sufficient funds are available. Should additional funding not be available, the Purchasing Manager, City Engineer and/or Project Manager shall report to the Finance Director the necessary scope of adjustment of the project or contract so as to permit the degree of completion that is feasible within the total funds available.

#### **5:501 Architect-Engineer and Land Survey Services**

1. Applicability. Architect-Engineer (A/E) and land survey services shall be procured as provided in this section except as authorized by Sections 3:206 (Sole Source Procurement) and 3:207 (Emergency Procurements).
2. Policy. It shall be the policy of the City to publicly announce all requirements for architect-engineer and land survey services and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the type of service required at fair and reasonable prices.
3. Architect-Engineer Selection Committee. In the procurement of A/E and land survey services, the Purchasing Manager or the City Engineer shall encourage firms engaged in the lawful practice of their profession to submit a statement of qualifications and performance data. The City Engineer, or his designee, will be a member of all selection committees for A/E and land survey contracts over \$10,000. The selection committee shall also include the Director of the requesting department (or designee), and the Project Manager. At least one other individual, not a city employee, with interest in or knowledge of the project, must be chosen to serve on the committee as well.

The selection committee shall evaluate current statements of qualifications and performance data on file with the City, together with statements or proposals submitted regarding the proposed contract and may conduct discussions with one or more firms. The firms deemed to be the most highly qualified to provide the services required shall be selected in order of preference, based upon criteria established and published in the request. Local firms from the Quad Cities will have two and one half points added to their total evaluation score. Firms which have their main office located in Davenport will receive an additional two and one half points added to their total evaluation score.

4. **Negotiations.** The selection committee (or a representative of the committee) shall negotiate a contract with the highest qualified firm for A/E or land survey services at compensation that the selection committee determines in writing to be fair and reasonable to the City. In making this decision, the selection committee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the committee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, the committee shall formally terminate negotiations. Negotiations shall then commence with the second most qualified firm, and so on, until a fair and reasonable contract price is reached. Should the committee be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, additional firms may be selected in order of their competence and qualifications and the selection committee shall continue negotiations in accordance with this section until an agreement is reached.
5. **Vendor Evaluation.** Firms awarded contracts for A/E services with the City may undergo a standardized evaluation upon completion of the work. The firm's eligibility status for being awarded future contracts will be governed by current policies adopted by the Davenport City Council which will include, but not be limited to, these evaluation results.

## **SECTION 6 – Modification and Termination of Contracts for Equipment, Supplies and Services**

### **6:101 Contract Clauses and Their Administrations**

1. **Contract Clauses.** The Purchasing Manager or City Engineer may require the inclusion of clauses providing for adjustments in prices, time of performance, or other contractual provisions as appropriate covering the following subjects:
  - A. The unilateral right of the City to order in writing:
    - (1) Changes in the work within the scope of the contract
    - (2) Temporary stopping of the work or delaying performance.
  - B. Variations occurring between estimated quantities of work in a contract and actual quantities.
2. **Price Adjustments.** Adjustments in price pursuant to clauses promulgated under Subsection 1 of this Section shall be computed on one or more of the following ways:
  - A. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable.
  - B. By unit prices specified in the contract or subsequently agreed upon.

- C. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon.
  - D. In such other manner as the contracting parties may mutually agree.
  - E. In the absence of agreement by the parties, by a unilateral determination by the City of the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the City in accordance with applicable sections of this manual under Section 7 (Cost Principles) and subject to the provisions of Section 9 (Legal and Contractual Remedies) of this policy manual.
3. Additional Contract Clauses. Contract clauses covering but not limited to the following subjects may be included in City contracts as needed given the scope of work to be performed:
- A. Liquidated damages as provided.
  - B. Specified excuses for delay or non-performance.
  - C. Termination of the contract for default.
  - D. Termination of the contract in whole or in part for the convenience of the City.
4. Modification of Clauses. The City may vary the clauses promulgated by this manual under Subsection 1 (Contract Clauses) and Subsection 3 (Additional Contract Clauses) of this Section for inclusion in any particular City contract provided that any variations are supported by a written determination that states the circumstances justifying such variation and has the concurrence of the City's legal council and provided that notice of any such material variation be included in the invitation for bids or request for proposals.

## **SECTION 7 – Cost Principles**

### **7:101 Cost Principles**

This manual shall require the Purchasing Manager and Director of the appropriate department, or the City Engineer to determine the allowability of incurred costs for the purpose of reimbursing said costs under specific contract provisions which provide for the reimbursement of costs.

Cost principles may be modified by contract only if a written determination is approved by the Finance Director and is not in violation of Section 3 (Source Selection and Contract Formation) of this manual.

## **SECTION 8 – Supply Management**

### **8:101 Definitions of Terms Used in this Section**

1. '*Excess Supplies*' means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the using department in possession of the supplies.
2. '*Expendable Supplies*' means all tangible supplies other than non-expendable supplies.
3. '*Non-Expendable Supplies*' means all tangible supplies having an original acquisition cost of over \$100.00 per unit and a probable useful life of more than one year.

4. 'Supplies' means, for the purposes of this Section, supplies owned by the City (See Section 1:301 (21) Supplies).
5. 'Surplus Supplies' means any supplies other than expendable supplies no longer having any use to the City. This includes obsolete supplies, scrap metals, and non-expendable supplies that have completed their useful life cycle.

### **8:201 Supply Management**

The Finance Department shall provide documented controls accounting for the inventory control of all supplies and equipment during:

1. Entire life cycle.
2. Transfer of excess supplies or equipment.
3. The sale, lease or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by this manual or City ordinance.

### **8:301 Allocation of Proceeds from Sale or Disposal of Surplus Supplies**

Unless otherwise provided by law, the Finance Director shall be empowered to allocate proceeds from the sale, lease, or disposal of surplus supplies or equipment.

## **SECTION 9 – Legal & Contractual Remedies**

### **9:101 Authority to Resolve Protested Solicitations and Awards.**

1. Right to Protest. Any participating bidder, offeror, or contractor who is alleged to be aggrieved in connection with the solicitation or award of a contract may protest to the Finance Director. The protest shall be submitted in writing within three (3) days after such aggrieved person knows or should have known of the city's intent to award a contract. A vendor may only protest under the following circumstances:

A. Only with an Invitation to Bid does the protesting vendor that was low bid and was determined by the city to be not Responsive<sup>a</sup> or Responsible<sup>b</sup>. (This does not apply to Request for Proposals and Request for Qualifications.

a. Definition of Responsive Bidder - Bidder has bid according to specifications without any conditions, qualifications, or exclusions and in compliance with the bid form and other documents.

b. Definition of Responsible Bidder - Bidder has the capacity, not only financially, but also the skills, manpower and performance ability to complete the project as specified.

2. Finance Director's Response. A protest letter must be sent to the Finance Director. The Finance Director shall review the protest and respond to the vendor in writing with his/her determination as to whether the vendor was not Responsive<sup>a</sup> or Responsible<sup>b</sup>.

3. City Administrator's Response. If the protest is not resolved by mutual agreement between the Finance Director and the protestant, the protestant may make a written appeal to the City Administrator. The City Administrator shall review the protest and respond to the vendor in Writing and with his/her determination as to whether the vendor was or was not responsive<sup>a</sup> or responsible<sup>b</sup>.
4. Notice of Decision. A copy of the decision under Subsection 2 and 3 of this Section shall be Mailed, emailed, or otherwise furnished immediately to the protestant and any other party intervening.
5. Authority to Resolve Protests. The City Administrator and the Finance Director shall have the authority to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be exercised in accordance with ordinances promulgated by the City Council.
6. Finality of Decision. A decision under Subsection 3 of this Section shall be final and conclusive.
7. Stay of Procurements During Protests. In the event of a timely protest under Subsection 1 of this Section, the City shall not proceed further with the solicitation or with the award of the contract Unless the City Administrator or the Finance Director, after consultation with the Purchasing Manager and the user department, makes a written determination that the award of the contract without delay is necessary to protect the substantial interests of the City.

## **9:102 Authority to Debar or Suspend**

1. Authority. The Finance Director, after consultation with the Purchasing Manager and/or the user department's director, shall have authority to debar a person or firm for cause from consideration for award of contracts. The debarment shall not be for a period of more than five years.
2. Causes for Debarment or Suspension. The causes for debarment or suspension including but are not limited to, the following:
  - A. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
  - B. Conviction under State or Federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a City contractor.
  - C. Conviction under State or Federal statutes arising out of the submission of bids or proposals.
  - D. Violation of contract provisions, regarded to be so serious as to justify debarment action including, but not limited to, the following:
    - (1) Failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract.
    - (2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more previous or current contracts.
  - E. Failure to perform or unsatisfactory performance caused by acts beyond the control of the



contractor shall not be considered to be a basis for debarment.

F. Any other cause the Finance Director determines to be so serious and compelling as to affect responsibility as a City contractor, including but not limited to debarment by another governmental entity.

G. For violation of the ethical standards act set forth in Section 12 (Ethics in Public Contracting).

H. For receiving an unsatisfactory evaluation upon completion of a project or contract.

I. Other causes as noted in City ordinance section 2.12.230.

3. Decision. The Finance Director shall issue a written decision to debar or suspend. The decision shall:

A. State the reasons for the action taken.

B. Inform the debarred or suspended person involved of his rights to administrative review as provided in this Section.

4. Notice of Decision. A copy of the decision under Subsection 3 of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

5. Appeal to City Administrator. The vendor must appeal to the City Administrator within 3 days of notice.

6. Finality of Decision. A decision under Subsection 3 of this Section shall be final and conclusive; the City Administrator is the final and only appeal level and will review.

### **9:103 Authority to Resolve Contract and Breach of Contract Controversies**

1. Applicability. This section applies to controversies between the City and a contractor that arise under, or by virtue of, a contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or recession. The protest shall be submitted in writing within three days after such aggrieved person knows or should have known of the facts giving rise thereto.

2. Authority. The Finance Director is authorized to settle and resolve a controversy described in Subsection 1 of this Section.

## **SECTION 10 – INTER-GOVERNMENTAL RELATIONS**

### **10:101 Definitions of Terms Used in this Section**

1. ‘*Cooperative Purchasing*’ means procurement conducted by or on behalf of, more than one public procurement unit or by a public procurement unit with an external procurement agency.

2. ‘*External procurement agency*’ means any buying organization not located in this City, which if located in this City, would qualify as a local public procurement unit. An agency of the State of Iowa or the Federal Government is an external agency.

3. *'Local public procurement unit'* means any county, city, town, and any other subdivision of the State of Iowa or public agency of any such subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of equipment, supplies, services or construction, and any nonprofit corporation operating a charitable hospital.

#### **10:201 Cooperative Purchasing Authorized**

The Purchasing Manager, with the concurrence of the Finance Director, may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any equipment, supplies, services, or construction with one or more public procurement units or external procurement agencies in accordance with an agreement entered into between participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended State or Federal public procurement unit contracts, which are made available to local public procurement units.

#### **10:202 Sale, Acquisition, or Use of Supplies by a Public Procurement Unit**

The Purchasing Manager may sell to, acquire from, or use any supplies belonging to another local public procurement unit or external public agency independent of the requirements of Section 3 (Course Selection and Contract Formation) and Section 8:201 (Supply Management) of this manual.

#### **10:203 Joint Use of Facilities**

The Purchasing Manager, with concurrence of the Finance Director, may enter into agreements for the common use or lease of warehousing facilities, capital equipment and other facilities with another public or external procurement unit under terms agreed upon between both parties.

#### **10:204 Supply of Personnel, Information, and Technical Services**

1. Supply of Personnel. The Purchasing Manager with concurrence of the Finance Director may, upon written request from another public or external procurement unit, provide personnel to the requesting public or external procurement unit. The requesting unit shall pay the City the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.
2. Supply of Services. The informational, technical, and other services of the City's Purchasing Division may be made available to any other public or external procurement unit, provided that the City's services shall have precedence over the requesting unit. The requesting unit shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.
3. Purchasing Information Services. Upon request, the Purchasing Manager may make available to public or external procurement units the following services among others:
  - A. Standard forms
  - B. Printed manuals
  - C. Product specifications and standards

- D. Quality assurance testing services and methods
  - E. Qualified products lists
  - F. Source information
  - G. Common use commodities listing
  - H. Supplier prequalification information
  - I. Supplier performance ratings
  - J. Debarred and suspended bidder's list
  - K. Forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms
  - L. Contracts or published summaries thereof, including price and time of delivery information
4. City Technical Services. The City, through the Purchasing Manager, may provide the following technical services among others:
- A. Development of product specifications.
  - B. Development of quality assurance test methods.

**SECTION 11 – Assistance to Small and Disadvantaged Businesses**

**11:101 Definition of Terms Used in this Section**

The City of Davenport shall promulgate regulations establishing detailed definitions of the following terms, using, in addition to the criteria set forth in this section, such other criteria, as it may deem desirable.

- 1. *'Disadvantaged Business Enterprise' or 'DBE'* means a small business that is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.
- 2. *'Small Business'* means a United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

**11:201 Statement of Policy and Its Implementation**

- 1. Statement of Policy. It shall be the policy of the City to assist small and disadvantaged businesses by providing information and assistance related to the bidding process and contractual requirements.
- 2. Implementation. The Purchasing Division shall implement the policy set forth in Subsection 1 of this Section in accordance with regulations promulgated by the State of Iowa under this Section.
- 3. Certification of DBE firms. The City of Davenport shall comply with and participate in the State of Iowa DBE Certification Program as Federally mandated.

### **11:202 Duties of the Purchasing Division**

1. Assistance with City Policies. When requested, the Purchasing Division shall provide assistance to the City's small and/or disadvantaged businesses in learning how to do business with the City.
2. Special Publications. The Purchasing Division shall give special publicity to procurement procedures designated to assist small and/or disadvantaged businesses in learning how to do business with the City.
3. Source Lists. The Purchasing Division shall make available source lists of small and disadvantaged businesses for the purpose of encouraging procurement from such small and disadvantaged businesses.
4. Solicitation Mailing Lists. To the extent deemed by the Purchasing Manager to be appropriate and as may be required by regulation, the Purchasing Division shall include a representative sampling of small and/or disadvantaged business on all solicitation mailing lists.
5. Solicitation of Small and Disadvantaged Businesses. The Purchasing Manager shall assure that small and/or disadvantaged businesses are solicited on each procurement when appropriate.
6. Training Programs. Staff from the Purchasing Division shall participate in special training programs conducted by the City or other agencies that shall assist small and disadvantaged businesses in learning how to do business with the City when possible.

### **11:203 Discretionary Duties**

1. Bonding. Notwithstanding other provisions of this manual, City ordinances, and/or state law, the Purchasing Manager with concurrence of the Finance Director, may reduce the level or change the type of bonding required or accept alternative forms of security, to the extent reasonably necessary to encourage procurement from small and disadvantaged businesses.
2. Progress Payment. The Purchasing Manager with concurrence of the Finance Director may make special provisions for progress payments, as deemed reasonably necessary to encourage procurement from small and disadvantaged businesses.

### **11:204 Report to the Affirmative Action Commission**

The Purchasing Manager shall report in writing to the Affirmative Action Commission concerning the awarding of contracts to small and disadvantaged businesses during the preceding month and year to date.

### **11:301 Compliance with Federal Requirements**

Where procurement involves the expenditure of federal assistance or contract funds, the Purchasing Manager or City Engineer shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected by City ordinance of this manual.

## **SECTION 12 – Ethics in Public Contracting**

### **12:101 Definitions of Terms Used in this Section**

1. *'Blind trust'* means an independently managed trust in which the employee beneficiary has no management rights and in which the employee beneficiary is not given notice of alterations in, or other dispositions of the property subject to the trust.
2. *'Confidential information'* means any information which is available to an employee only because of the employee's status as an employee of the City and is not a matter of public record or available to the public on request.
3. *'Conspicuously'* means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.
4. *'Direct or indirect participation'* means involvement through decision approval, disapproval, recommendation, preparation of any part of a purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
5. *'Financial interest'* means:
  - A. Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive more than \$50.00 per year or its equivalent;
  - B. Ownership of such interest in any property or any business as may be specified by the City Council; or
  - C. Holding a position in a business such as an officer, director, trustee, partner, employee, or the like of holding any position of management.
6. *'Gratuity'* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
7. *'Immediate family'* means spouse, children, parents, and such other relatives as may be designated by the City Council as described by the City's Legal Department.
8. *'Official responsibility'* means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct City action.
9. *'Purchase request'* means that document whereby a using department requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical specifications of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this manual or City ordinance.

## **12:201 Statement of Policy**

Public employment is a public trust. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City procurement organization.

## **12:202 General Standards of Ethical Conduct**

1. General Ethical Standards for Employees. Any attempt to realize personal gain inconsistent with the proper discharge of the employee's duties is a breach of public trust. All City employees must meet the specific standards set forth in Sections 12:204 (Employee Conflict of Interest), 12:205 (Employee Disclosure Requirements), 12:206 (Gratuities and Kickbacks), 12:207 (Prohibition Against Contingent Fees), 12:208 (Restrictions on Employment of Present and Former Employees), and 12:209 (Use of Confidential Information).
2. General Ethical Standards for Non-Employees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section is also a breach of ethical standards.

## **12:203 Criminal Sanctions**

To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of City ordinance or State code, they shall be punishable as provided therein.

## **12:204 Employee Conflict of Interest**

1. Conflict of Interest. Iowa Code 362.5 states, "A city officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the officer's or employee's city. A contract entered into in violation of this section is void. The provisions of this section do not apply to contracts not otherwise permitted by this section for the purchase of goods or services by a city having a population of more than two thousand five hundred, which benefit a city officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of one thousand five hundred dollars in a fiscal year." It is the policy of the City of Davenport that, when the \$1,500 threshold is reached in any fiscal year (July 1 through June 30), any further potential purchases or contracts must be as a result of competitively bidding through the Purchasing Division.

It shall be the employee's responsibility to maintain a record of sales made to the City and, if the \$1,500 threshold is met during a fiscal year, to notify the using department and the Purchasing Division.

Upon reaching the maximum cumulative total purchase price, it shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

- A. The employee or any member of the employee's immediate family has a financial interest pertaining to such procurement.
  - B. A business organization in which the employee, or any member of the employee's immediate family has a financial interest pertaining to such procurement.
  - C. Any other person, business, or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in such procurement.
2. Financial Interest in a Blind Trust. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest, provided that disclosure of the existence of the blind trust has been made to the Finance Director.
  3. Discovery of Actual or Potential Conflict of Interest, Disqualifications, and Waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification with the Purchasing Manager, and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Purchasing Manager for an advisory opinion as to what further participation, if any, the employee may have in the transaction. Upon receipt of such requests, the Purchasing Manager shall make full report with his recommendations to the Finance Director for a final ruling.

#### **12:205 Employee Disclosure Requirements**

1. Disclosure of Benefit Received from Contract. Any employee who has or obtains any benefit from any City contract with a business in which the employee has a financial interest shall report such benefit to the Purchasing Manager; provided however, this Section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.
2. Failure to Disclose Benefit Received. Any employee who knows or should have known of such benefit and fails to report such benefit, is in breach of the ethical standards of this Section.

#### **12:206 Gratuities and Kickbacks**

1. Gratuities. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the auditing, or in any other advisory capacity in any proceeding or application, request for ruling determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.
2. Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime

contractor, higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontract or order.

3. Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in a special clause or form, in every contract and solicitation therefore.

#### **12:207 Prohibition Against Contingent Fees**

1. Contingent Fees. It shall be a breach of ethical standards for a person to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
2. Representation of Contractor. Every person, before being awarded a City contract shall represent, in writing, that such person has not retained anyone in violation of Subsection 1 of this Section. Failure to do so constitutes a breach of ethical standards.
3. Contract Clause. The representation prescribed in Subsection 2 of this Section shall be conspicuously set forth in every contract and solicitation therefore.

#### **12:208 Restrictions on Employment of Present and Former Employees**

1. Contemporaneous Employment Prohibited. Except as may be permitted by regulations or rulings of the Human Resources Director, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body or commission by whom the employee is employed.
2. Restrictions on Former Employees in Matters Connected with their Former Duties.

It shall be a breach of ethical standards for any employee knowingly to act as a principal, or as an agent, for anyone other than the City, in connection with any:

- i. Judicial or other proceeding, application, request for a ruling, or other determination;
  - ii. Contract;
  - iii. Claim; or
  - iv. Change or controversy in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the City is a party or has a direct and substantial interest.
3. One Year Representation Restriction Regarding Matters for which a Former Employee was Officially Responsible.



It shall be a breach of ethical standards for any former employee, within one year after cessation of the former employee's official responsibility, knowingly to act as a principal, or as an agent, for anyone other than the City in connection with any:

- A. Judicial or other proceeding, application, request for a ruling, or other determination,
  - B. Contract,
  - C. Claim, or
  - D. Change or controversy, in matters which are within the former employee's official responsibility, where the City is a party or has a direct or substantial interest.
4. Disqualification of Business when an Employee has a Financial Interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the City, in connection with any:
- a. Judicial or other proceeding, application, request for a ruling, or other determination;
  - b. Contract;
  - c. Claim; or
  - d. Change or controversy; in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the City is a party or has a direct and substantial interest.
5. Selling to the City after Termination of Employment is Prohibited. It shall be a breach of ethical standards for any former employee whose annual salary was more than \$15,000 per year to engage in selling or attempting to sell equipment, supplies, services, or construction to the City for one year following the date employment ceased.

The term "sell" as used herein means signing a bid, proposal, or contract, negotiating a contract; contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract, therefore, is subsequently negotiated by another person. This section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with the City, nor shall a former employee be precluded from serving as a consultant to the City.

#### **12:209 Use of Confidential Information**

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

#### **12:301 Remedies Against Employees who Breach Ethical Standards**

1. Existing Remedies Not Impaired. City ordinance and administrative remedies against employees, which are in existence or may be promulgated, shall not be impaired by this manual.

2. Supplemental Remedies. In addition to existing remedies for breach of ethical standards, the Finance Director or his designee may recommend any one or more of the following:
  - A. Oral or written warnings or reprimands,
  - B. Suspension with or without pay for specified periods of time, and
  - C. Termination of employment.
3. Right to Recover from Employee Value Received in Breach of Ethical Standards. The value of anything received by an employee in breach of ethical standards of this manual shall be recoverable by the City as provided in Section 12:303 (Recovery of Value Transferred or Received in Breach of Ethical Standards).
4. Due Process. All procedures under this Section shall be in accordance with due process requirements and existing law. In addition, notice and an appointment for a hearing shall be provided prior to imposition of any suspension or termination of employment.

### **12:302 Remedies Against Non-Employees Who Breach Ethical Standards**

1. Existing Remedies Not Impaired. Civil and administrative remedies against non-employees, which are in existence on the effective date of this manual, shall not be impaired.
2. Supplemental Remedies. In addition to existing remedies for breach of ethical standards by City code or State law, the Finance Director or his designee may impose any one or more of the following:
  - A. Written warnings or reprimands.
  - B. Termination of transactions.
  - C. Debarment or suspension from being a contractor or subcontractor under City contracts.
3. Right to Recover from Non-Employees Value Transferred in Breach of Ethical Standards. The value of anything transferred in breach of this manual by a non-employee shall be recoverable by the City as provided in Section 12:303 (Recovery of Value Transferred or Received in Breach of Ethical Standards).
4. Right of the City to Debar or Suspend. Debarment or suspension may be imposed by the Finance Director in accordance with the procedures set forth in Section 9:102 (Authority to Debar or Suspend), for breach of ethical standards, in this manual.
5. Due Process. All procedures under this Section shall be in accordance with due process requirements, including, but not limited to, a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor under a City contract.

### **12:303 Recovery of Value Transferred or Received in Breach of Ethical Standards**

1. General Provisions. The value of anything transferred or received in breach of the ethical standards of this manual or City ordinances promulgated hereunder by an employee or a non-employee shall be recovered by the Finance Director.

2. Recovery of Kickbacks by the City. Upon showing that a subcontractor or a higher tier subcontractor was involved in kickbacks in connection with the award of a subcontract or order, it shall be presumed that the amount of kickback was included in the price of the subcontract or order and ultimately borne by the City, and therefore, will be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

## **SECTION 13 – FEDERAL REQUIREMENTS FOR TRANSIT PURCHASES**

### **13:101 Federal Transit Administration Regulations**

The Federal Transit Administration has set forth requirements that must be followed in the solicitation, award and administration of contracts for the City of Davenport's Transit Division. These requirements are based on the common grant rules, Federal statutes, Executive Orders and their implementing regulations, and FTA policy.

The City of Davenport is required to maintain written records of procurement history for transit purchases. These records shall include, at a minimum, the following:

1. The rationale for the method of procurement;
2. Independent Cost Estimate
3. Selection of contract type;
4. Reasons for contractor selection or rejection;
5. Price/Cost Analysis.

#### References:

- a. Federal Transit Laws, 49 U.S.C. Chapter 53
- b. Transportation Equity Act for the 21<sup>st</sup> Century 1998 (TEA-21), P.L. 105-178 as amended, TEA-21 Restoration Act 1998, P.L. 105-206
- c. Federal Acquisition Streamlining Act of 1994, sections 4001 & 1555, 41 U.S.C. § 403(11) and 40 U.S.C. § 481(b), respectively
- d. 49 C.F.R. part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

### **13:102 City of Davenport/CitiBus Protest Procedures for Federally Funded Purchases**

**PROTEST POLICY AND PROCEDURES.** It is the policy of the City of Davenport/CitiBus that it is responsible for resolving all Pre-Bid, Pre-Award and Post-Award Procurement Protest disputes arising out of third party procurements using good administrative practices and sound business judgment. It is the City of Davenport/ CitiBus's intention that its procurement process provides for fair and open competition in compliance with federal and state laws and the City of Davenport policies.

The City of Davenport/CitiBus has established these Pre-Bid, Pre-Award and Post-Award Procurement Protest Policy and Procedures so that all procurement protests/disputes are filed,

processed and resolved in a manner consistent with the requirements of the Federal Transit Administration (FTA) Circular (4220.IF) Third Party Contracting Guidance, dated November 1,2008, which are on file at the City of Davenport and the CitiBus Offices and available upon request.

### **APPLICABILITY**

This regulation is applicable to all the City of Davenport/CitiBus employees. This regulation is applicable to any Interested Party as defined herein who has a protest/dispute against the City of Davenport/CitiBus in the Pre-Bid, Pre-Award and Post-Award procurement phase.

### **DEFINITIONS**

“Common Grant Rules” refers to the Department of Transportation regulations “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR Part 18, which apply to Federal grants and cooperative agreements with governmental recipients/subrecipients of Federal assistance including Indian tribal governments.

“Interested Party” means a party that is an actual or prospective Bidder or offeror whose direct economic interest would be affected by the award or failure to award the third party contract at issue. A subcontractor does not qualify as an “interested party”.

“Protest” means a formal declaration of disapproval or objection issued by a concerned person, group, or organization that arises during the procurement process. A Protest is a potential Bidder’s or contractor’s remedy for correcting a perceived wrong in the procurement process. See “Types of Protests” below.

“Protester” means a person, group, or organization that files a formal declaration of disapproval or objection. A protester must qualify as an “interested party”.

“Types of Protests” there are three basic types of Protests pursuant to this regulation, based on the time in the procurement cycle when they occur:

1. A pre-bid or solicitation phase Protest is received prior to the bid opening or proposal due date. Pre-bid protests are those based on the content of the initial Notice and/or solicitation published by the City of Davenport requesting bids from vendors or other interested parties.
2. A pre-award Protest is a protest against making an award and is received after receipt of proposals or bids, but before award of a contract.
3. A post-award Protest is a protest received after award of a contract. A post-award Protest must be received within five (5) business days of the making of the award. A post-award Protest generally alleges a violation of applicable federal or state law and/or the City of Davenport policy or procedures relative to the seeking, evaluating and/or awarding of the contract.

## **STANDARDS**

All Protests must be filed in writing to:

Chief Financial Officer  
City of Davenport  
226 W 4th St.  
Davenport, IA 52801

Additionally a copy must be provided to:

Transit Operations Manager  
CitiBus  
1200 E. 46<sup>th</sup> Street  
Davenport, IA 52807

No other locations are acceptable.

A Protest must be in writing and set forth the specific grounds of the dispute and shall be fully supported with technical data, test results, or other pertinent information related to the subject being protested. The Protest shall include the name and contact information of the Protester, solicitation/contract number or description, and what remedy the Protester is seeking. The Protester is responsible for adhering to this regulation. A Protester must exhaust all of protest administrative remedies before pursuing a protest with the FTA.

The City of Davenport shall make a determination on the Protest generally within ten (10) working days from receipt of the Protest. The decision will be provided in writing and shall include a response to each substantive issue raised in the Protest. The Chief Financial Officer's decision shall constitute the City of Davenport/CitiBus's final administrative determination.

If the City of Davenport postpones the date of Bid submission because of a Protest or Appeal of the solicitation specifications, addenda, dates or any other issue relating to the procurement, the City of Davenport will notify, via addendum, all parties who are on record as having obtained a copy of the solicitation documents that a Protest/Appeal had been filed, and the due date for Bid submission shall be postponed until the Chief Financial Officer for the City of Davenport has issued its final Decision.

The Protester may withdraw its Protest or Appeal at any time before a final decision is issued.

Reviews of Protests by FTA are limited to 1) failure to have or follow its protest procedures, or its failure to review a complaint or Protest; or 2) violations of Federal law or regulation.

A Protest Appeal to the FTA must be filed in accordance with the provisions of FTA Circular 4220.IF. Any appeal to the FTA shall be made not later than five (5) working days after a final decision by the City of Davenport or Designee is rendered. Protest appeals should be filed with:

Regional Administrator, Region VII  
Federal Transit Administration  
901 Locust Street, Suite 404  
Kansas City, MO 64106

## **THE CITY OF DAVENPORT RESPONSIBILITIES TO FTA**

The City of Davenport will notify FTA when they receive a third party contract protest to which the FTA Circular (4420.IF) Third Party Contracting Guidance applies, and will keep FTA informed about the status of the Protest including any appeals.

The City of Davenport will provide the following information to FTA:

Subjects: A list of Protests involving third party contracts and potential third party contracts that:

- ✓ Have a value exceeding \$100,000, or
- ✓ Involve controversial matter, irrespective of amount, or
- ✓ Involve a highly publicized matter, irrespective of amount.

Details: The following information about each Protest:

- ✓ A brief description of the Protest,
- ✓ The basis of disagreement, and
- ✓ If open, how far the Protest has proceeded, or
- ✓ If resolved, the agreement or decision reached, and
- ✓ Whether an appeal has been taken or is likely to be taken.

When and Where: The City of Davenport will provide this information:  
✓ At the conclusion of the protest review.

Officials to Notify: When the City of Davenport denies a bid Protest, the City of Davenport/CitiBus will provide information regarding the Protest to the FTA Regional Administrator for Region VI.

The City of Davenport will disclose information about any third party procurement Protest to FTA upon request. FTA reserves the right to require the City of Davenport to provide copies of a particular Protest or all Protests, and any or all related supporting documents, as FTA may deem necessary.

Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

### **SECTION 14 – Special Provisions**

#### **14:101 American Recovery and Reinvestment Act of 2009**

The following provisions pertain only to procurement transactions paid with Capital Fund Recovery Grants (CFRGs) funding under the American Recovery and Reinvestment Act of 2009 (ARRA).

**Origin of Manufactured Products.** All products (supplies, materials and equipment) secured under individual procurement transactions exceeding \$100,000 must be manufactured in America. The Authority will retain on file evidence demonstrating compliance with this provision.

**Inapplicability of State and local laws.** State and local laws do not apply to procurement transactions under this section.

**Use of the Non-Competitive Method of Procurement.** The need to expend grant funds is considered a public exigency by HUD; and the Authority may use this declaration as the basis for using the non-competitive proposals method of procurement in accordance with the standards set forth under this policy.

**Eligibility of Expenses.** The Authority may not sue grant funds to support housing operations. Prohibited purchases include, but are not necessarily limited to: Management improvements, including training, travel, salary costs, maintenance programs, occupancy programs, social services, consulting services (other than architectural, engineering and other types of services related to physical improvements); office equipment and furniture; and maintenance equipment.

### THIRD PARTY CONTRACTING

Circular #FTA C 4220.1F

**Federal Transit Administration Provision.** This circular provides contracting for recipients of Federal assistance awarded by the Federal Transit Administration (FTA) when using that Federal assistance to finance its procurements (third party contracts). This revision incorporates the new procurement provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFEETEA-LU), and includes the most current available guidance for the Federal public transportation program as of the date of date of publication.

### BUY AMERICA

For rolling stock, steel, iron, or manufactured products Procurement and Purchases \$100,000 and above using FTA funds, the City of Davenport will include all Buy America certifications, reports, and forms.

## *Davenport Municipal Code*

### **2.12.060 Terms.**

For the purpose of this chapter, the words set out in this section shall have the following meanings:

- A. "Agency" and "using agency": mean any of the departments, offices or other organizational units of the city, or any special district whose funds are appropriated by the city council.
- B. "Finance director" means the finance director or his designee.
- C. "Purchasing" means the procurement and acquisition of supplies, materials, equipment and/or contractual services necessary and related to the operation of city business.
- D. "Supplies," "materials," and "equipment" mean any and all articles or items which shall be furnished to or used by any agency, including any and all printing, binding, or publication of stationery, forms, laws, journals and reports.
- E. "Vendor" and "contractor" are used interchangeably. (Ord. 2005-292 § 1 (part); New: Ord. 80-1008 § 1 (part); prior code § 2-188).

### **2.12.070 Purchasing provisions.**

Approval of purchases and bidding procedures shall be subject to the following provisions of this chapter and applicable provisions of state and federal law:

- A. Approval Authority.
  - 1. There must exist authorized budget appropriation.
  - 2. For purchases of three thousand dollars or less, the approval of the director of the requesting agency or designee.
  - 3. For purchases in excess of three thousand dollars but not exceeding ten thousand dollars, the approval of the finance director. However, the city administrator is not subject to this provision.

4. For purchases in excess of ten thousand dollars but not exceeding fifty thousand dollars, the approval of the city administrator or designee.
5. Purchases exceeding fifty thousand dollars require city council approval.
- B. Finance Committee Review. Purchases in excess of ten thousand dollars but not more than fifty thousand dollars that occur between finance committee meetings shall be placed upon the next following finance committee agenda for informational review only.
- C. Competitive bids.
  1. Wherever required by state or federal law, all purchases and contracts for supplies, materials, equipment, public improvements, and contractual services shall be on an equal and competitive basis.
  2. All other purchases and contracts may follow the procedure, which in the judgment of the director of finance, will result in the best value to the city.
  3. All competitively bid acquisitions or purchases are to be based on the lowest responsible bid, determining the lowest responsible bidder in accordance with section 2.12.170 below. (Ord. 2005-292 § 1 (part): New: Ord. 80-1008 § 1 (part): prior code § 2-189).

**2.12.080 Purchasing - Administrative procedures.**

In an effort to insure effective purchasing procedures and operations, the finance director shall establish a purchasing manual setting forth administrative procedures. A copy of the purchasing manual shall be furnished to all agencies of the city, and shall be available for public inspection in the office of the city clerk and purchasing office during regular business hours. The procedures should provide for the following:

- A. The use of standard specifications wherever applicable;
- B. The transferring between agencies of supplies, materials, and equipment defined as surplus or no longer of use to the holding agency;
- C. The establishment of an inventory system defining the condition, value, and location of all city property and further determining the disposition of property classified as surplus, obsolete and/or unused;
- D. Bid requirements and specification standards; proper handling, custody, safeguarding, and disposition of bids (including the necessity of possible rejection and advertising) for performance reliability, and the criteria for determining a lowest bidder.
- E. Receiving and inspection criteria for purchases;
- F. Acquisition or purchases within the provisions of this chapter and state law, including requisitions, specifications, ordering, emergency purchases criteria, and post audit;
- G. Control and safeguarding of supplies, materials, and equipment;
- H. Purchasing of patented or proprietary articles;
- I. General guidelines for determining the purchasing process to be followed and criteria for use in evaluating proposals.
- J. Such matters as the finance director may deem necessary to give effect to provisions of this chapter and any amendments thereto. (Ord. 2005-292 § 1 (part): New: Ord. 80-1008 § 1 (part): prior code § 2-190).

**2.12.090 Duty of director of finance.**

The finance director has charge of the procurement and disposition of all equipment, materials, supplies and independent contractors' services for use in or used in the city service. The finance director is responsible for the activities of the purchasing division. The procurement and disposition of all



equipment, materials, supplies, and independent contractors' services for use in city service shall be conducted by the purchasing division, except those contracts for construction of public improvements included in the capital improvements program and professional service agreements necessary for the implementation and construction of public improvements included in the capital improvements program which shall be exempt from this section and shall be in accordance with state law under the direction of the city engineer or designee and professional service agreements for attorneys, which shall be under the direction of the corporation counsel. Purchases by the levee commission, library, housing rehabilitation division, and civil rights commission also are not conducted by the purchasing division. (Ord. 2005-292 § 1 (part)).

#### **2.12.100 Preference for state products and labor.**

The requirement of Iowa Code § 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 purchase or use of products and provisions grown and coal produced within the state. (Ord. 2005-292 § 1 (part)).

#### **2.12.110 Preference for local goods and services.**

- A. 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 services in comparison to businesses located outside the corporate limits and to encourage businesses to locate and remain in the city through the provision of a preference to local businesses in the awarding of city contracts governed by this chapter, preference may be given to a responsive bid from a business located within the corporate limits or that proposes a product substantially manufactured within the city over an acceptable low bid submitted by a business located outside of the corporate limits or bid not including a product substantially manufactured within the city, where the city bidder's bid **exceeds the acceptable low bid by no more than one percent.** "Substantially manufactured" means more than a *de minimis* portion of the assemblage or production in the judgment of the purchasing division. This preference is applicable only to goods and services purchased without the assistance of federal, state or county grants or funds or pursuant to the competitive bidding laws of the state.
- B. A business shall be determined to be within the corporate limits of the city by the physical and economic relationship to the city determined by the payment of city property taxes on a plant or office or the payment of rent to a landlord paying city property taxes on such plant or office for not less than one year. (Ord. 2005-292 § 1 (part)).

#### **2.12.120 Generic requests for bids.**

Whenever feasible, requests made for bids and proposals for materials, products, supplies, provisions and other needed articles may be made in general terms and by general specifications and not by brand, trade name or other individual mark. (Ord. 2005-292 § 1 (part)).

#### **2.12.130 Contracts exempt from competitive bidding.**

When not otherwise required by law, the following shall not be subject to the competitive bidding requirements of this chapter:

- A. Contracts 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.

- B. Contracts for Utility Services.
- C. Contracts for the repair of equipment and machinery or for 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 finance director approves the process.
- D. Contracts for the purchase of good or services that are of such a nature that they are the only goods 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 finance director approves the process.
- E. Contracts for the purchase of goods or services through which non-profit associations, established to aid or assist governmental bodies or other governmental agencies, have secured special rates or provisions for the purchase of goods or services for the benefit of governmental bodies or agencies.
- F. Contracts for goods or services procured through a cooperative chapter 28E agreement that were procured by a governmental entity participating in said 28E agreement, provided that the finance director determines that said entity procured the goods or services pursuant to competitive procurement procedures substantially equivalent to those set forth in this division. This provision also applies to purchases through the Bi-State Regional Commission.
- G. Contracts for the purchase of goods or services involving amounts of one thousand dollars or less.
- H. Any procurement 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.
- I. Any procurement of machinery, motor vehicles, materials, supplies, commodities, equipment or services from contracts established by the state of Iowa Department of General Services or Department of Transportation pursuant to procedures established by Iowa Code Chapter 18 and rules and regulations promulgated thereunder.
- J. Regular or temporary employment contracts or hiring in the municipal service, whether with respect to the classified service or otherwise.
- K. Any procurement from any federal, state, or local government unit or agency thereof, without conforming to the competitive requirements of this chapter, such machinery, motor vehicles, materials, supplies, commodities, equipment or services as are authorized by the finance director, provided that the purchasing division determines that such machinery, motor vehicles, materials, supplies, commodities, equipment or services were competitively procured by such unit or agency pursuant to competitive procurement procedures substantially equivalent to those set forth in this chapter, and can be purchased without mark-up from such other federal, state, or local government unit or agency.
- L. Procurement of equipment pursuant under contracts that have been competitively established through the Western States Contracting Alliance and other cooperative group contracting consortiums for state government departments, institutions, agencies and political subdivisions, without conforming to the competitive bidding requirements of this division.
- M. Where service or parts must be obtained from original equipment contractor in order to maintain equipment operation and warranty.
- N. The city council may on a case by case basis, upon the recommendation of the finance director and for good cause shown, exempt contracts for the provision of goods and/or services from the competitive bidding requirements not otherwise exempted by this section. (Ord. 2005-292 § 1 (part)).

#### **2.12.140 Public and operating emergencies.**

- A. When the mayor, pursuant to law, governs the city by proclamation in times of public danger or during an emergency, he or she may supersede or abrogate the provisions of this chapter. The mayor may, upon declaration of emergency by proclamation as provided in this section, authorize the finance director to procure by purchase or lease such goods and services as are deemed necessary for the city's emergency response effort. Such emergency procurement of goods or services may be made in the open market without filing a requisition or estimate therefore, and without advertisement therefore, for immediate delivery or furnishing. A full written account of all emergency procurements made during such emergency, together with a requisition for the materials, supplies, equipment or services required therefore, shall be submitted to or provided by the finance director within thirty 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 finance director 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. The finance director may purchase or may authorize a purchasing agent in writing or any department or any board or commission of the city to purchase, in the open market without filing a requisition or estimate therefore and without advertisement, any supplies, materials or equipment, or services that could not have been reasonably foreseen or anticipated, for immediate delivery or furnishing to meet bona fide operating emergencies if the amount thereof is not in excess of twenty-five thousand dollars. A full written account of any such operating emergency, together with a requisition for the materials, supplies or equipment required therefore, shall be submitted immediately to the finance director and shall be open to public inspection for a period of at least one year subsequent to the date of the emergency purchases. The finance director, 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 finance director in respect to purchases to meet such bona fide operating emergencies shall not be dependent upon the mayor governing the city by proclamation. (Ord. 2005-292 § 1 (part)).

#### **2.12.150 Collusion among bidders.**

Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price or otherwise shall render the bids of such bidders void. With respect to bids in excess of twenty-five thousand dollars, each bidder shall accompany his or her bid 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 in advance of the opening of the bids of the terms of the bids submitted in response to an advertisement made or permitted by the finance director shall render the proceedings void and shall require re-advertisement and re-award. (Ord. 2005-292 § 1 (part)).

#### **2.12.160 Award of contracts.**

- A. No purchase orders; no contracts of whatever nature for independent contractors' services or work; any purchase, lease or sale of personal property, materials, equipment or supplies; or the granting of any concession involving amounts up to fifty thousand dollars shall be awarded unless the same is authorized as provided in Section 2.12.070.
- B. No purchase orders; no contracts of whatever nature for independent contractors' services or work; any purchase, lease or sale of personal property, materials, equipment or supplies; or the granting of any concession involving amounts in excess of fifty thousand dollars, shall be awarded unless the same is authorized by the city council.
- C. An official copy of each awarded purchase order or contract, together with all necessary attachments

thereto, shall be retained by the finance director in an appropriate file open to the public for such period of time after completion or termination of contract during which action against the city might ensue under applicable laws of limitation. After such period has elapsed such purchase orders, contracts and attachments may be destroyed. (Ord. 2005-292 § 1 (part)).

**2.12.170 Determining responsibility of bidders.**

In determining responsibility of bidders pursuant to this chapter, the city may take into account the capacity or skill of the bidder to perform the contract or provide the service required; whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference; the experience of the bidder; the quality of performance of previous contracts or services; the previous and current compliance by the bidder with laws and ordinances relating to bidding or the contract or service or the purchasing process; the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services; the quality, availability of the supplies, or contractual services to the particular use required; the ability of the bidder to provide future maintenance and service for the use of the subject to the contract; quality of the product, goods or services proposed; and the number and scope of conditions attached to the bid. (Ord. 2005-292 § 1 (part)).

**2.12.180 No bids within budgeted amount.**

If, after competitive bidding procedures have been completed pursuant to this chapter, the finance director determines that no bid received for the purchase of equipment, materials, supplies or services is within the amount budgeted for the project, City personnel may negotiate with the lowest responsible bidder for the purchase of such equipment, materials, supplies or services so long as the negotiations do not result in a material change in the scope of the project. If a material change is required to bring the bid within budget then the project must be rebid. (Ord. 2005-292 § 1 (part)).

**2.12.190 Rejection of bids.**

Any and all bids received in response to an advertisement may be rejected by the city if the bidder is not deemed responsive or responsible or the character or quality of the services, supplies, materials or equipment 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 public interest may otherwise be served thereby. If the lowest bid after formal advertisement is rejected because it is not the lowest 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 purchasing agent. Bids may be rejected by the finance director or council. (Ord. 2005-292 § 1 (part)).

**2.12.200 Performance bond.**

A bond, with good and sufficient sureties, in an amount deemed adequate, not only to insure performance of the contract in the time and manner prescribed in the contract, but also 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 granting of the contract or which may in any way result therefrom may be required of each bidder upon contracts involving amounts in excess of five thousand dollars when, in the opinion of the finance director, the public interest will be served thereby. (Ord. 2005-292 § 1 (part)).

**2.12.210 Assignment of contract.**

No contract awarded shall be assignable by the successful bidder without the written consent of the person or body authorized to award the contract. In no event shall a contract or any part thereof be

assigned to a bidder who has been declared not to be a responsible bidder for the particular contract. (Ord. 2005-292 § 1 (part)).

**2.12.220 Change orders under twenty-five thousand dollars.**

The city administrator or designee may authorize a change order for an additional unit of material, equipment or service under twenty-five thousand dollars to an existing or recent purchase order previously approved by the council, if the circumstances requiring the change order were unforeseen or unanticipated, the purchasing agent certifies that the lowest responsible bidder agrees to hold the same price per unit open to allow the city to make the additional purchase, and the change order does not materially change the scope of the project. (Ord. 2005-292 § 1 (part)).

**2.12.230 Disqualification or other safeguards.**

- A. No contract or subcontract awarded pursuant to the provisions of this chapter shall be let to any vendor which is disqualified as hereinafter set out or is managed, controlled or more than fifty percent owned by a person or entity so disqualified. A vendor which is disqualified or is managed, controlled or more than fifty percent owned by a person or entity that is disqualified shall not act as subcontractor on any such contract.
- B. When the finance director, in the finance director's discretion, shall determine that a review should be undertaken regarding the suitability of a contractor or subcontractor for performance of future contracts with the city, the finance director shall review the performance of such contractor or subcontractor in performing prior contracts with the city. In determining whether a contractor or subcontractor should be disqualified from bidding on or receiving any city contracts for a period of time or be subject to other safeguards, the following may be considered.
  - 1. Whether the contractor or subcontractor incorporated materials into the work which were not in accordance with or equal to the materials specified in the contract.
  - 2. Whether the contractor or subcontractor performed any work on the contract without the insurance required by the contract.
  - 3. Whether the contractor or subcontractor completed the work in a timely manner.
  - 4. Whether the contractor or subcontractor obtained all permits required by law, and whether the contractor or subcontractor observed all required safety precautions in connection with handling, storage and use of explosives.
  - 5. Whether the contractor or subcontractor concealed substandard work from inspectors.
  - 6. Whether the contractor or subcontractor falsified test results.
  - 7. Whether the contractor or subcontractor repaired all property damaged in the course of doing the work.
  - 8. Whether the contractor or subcontractor paid suppliers.
  - 9. Whether the contractor or subcontractor complied with law relating to equal opportunity in employment or rules governing disadvantaged business enterprises.
  - 10. Whether the contractor or subcontractor disposed of hazardous or regulated waste only in those locations and in the manner which have been approved as provided by law and, if applicable, in the contract.
  - 11. Whether the contractor or subcontractor has paid applicable taxes, fines, judgments, license fees, or special assessment due to the city.
  - 12. Whether the contractor or subcontractor consistently fails to comply with the requirements of the bidding process.

13. Whether the contractor or subcontractor permits a subcontractor or any employee to violate any of the requirements listed herein.
  14. Whether the contractor or subcontractor receives an unsatisfactory score on the contractor evaluation form.
- C. If violations are found or if the contractor receives an unsatisfactory evaluation score, the finance director shall determine whether the bidder should be disqualified and the period of such disqualification or whether the bidder should be subject to other safeguards. In making this determination following a review of past performance and current actions of a contractor or subcontractor, the finance director shall consider the seriousness of the violation, whether the violation was intentional, and whether the contractor has been previously disqualified from contracts with the city. Any period of disqualification under this section shall not exceed five years.
- D. Failure to disqualify a contractor or subcontractor under the provisions of this section shall not stop the city from determining that a bidder is not the "lowest responsible bidder" under the criteria set forth in Section 2.12.170. (Ord. 2005-292 § 1 (part)).

**2.12.240 Lease or sale of city property.**

All sales or leases of city property are subject to the finance director's review and approval, unless the finance director states otherwise in writing. (Ord. 2005-292 § 1 (part)).