

Council Bill/General Ordinance No. 3029-2023

Sponsor: _____

AN ORDINANCE

AMENDING Chapter 27, “PURCHASING,” of the Moline Code of Ordinances, to provide for updated procedures, standards and streamlined procurement processes.

WHEREAS, the City of Moline (“City”) is a home rule municipality located in Rock Island County, Illinois; and

WHEREAS, Chapter 27 of the Moline Code of Ordinances sets forth the City’s public purchasing policies, and the City hereby desires to amend the City of Moline Code of Ordinances, as provided in this Ordinance, in order to modernize the procedures, standards associated with purchasing and to provide for greater procurement efficiencies through enhanced delegation and improved oversight functions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MOLINE, ILLINOIS, as follows:

Section 1 - The forgoing recitals are hereby incorporated into this Ordinance herein as findings of the corporate authorities of the City of Moline.

Section 2 - Chapter 27, “PURCHASING,” of the City of Moline Code of Ordinances, is hereby amended as follows (additions in **bold and underline** and deletions in **~~bold and strikethrough~~**, with omitted portions to remain in effect as presently written):

**“CHAPTER 27
PURCHASING**

Art. I. General Provisions

Div. 1. Purpose and Application, §27-1100 - §27-1103

Div. 2. Definitions, §27-1200 - §27-1201

Div. 3. Public Access to Procurement Information, §27-1300

Art. II. Purchasing Responsibilities of City Officers and Employees, §27-2100 - §27-2105

Art. III. Source Selection and Contract Information

Div. 1. Methods of Source Selection, §27-3100 - §27-3110

Div. 2. Rights and Responsibilities, §27-3200 - §27-3203

Div. 3. Types of Contracts and Contract Administration, §27-3300 - §27-3306

Art. IV. Specifications, §27-4100 - §27-4104

Art. V. Procurement of Construction, Architect-~~u~~ Engineer and Land Surveying Services

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Div. 1. Bid Security and Performance Bonds, §27-5100 - §27-5103

Div. 2. Architect-Engineer and Land Surveying Services, §27-5200 - §27-5201

Art. VI. Debarment or Suspension, §27-6100 - §27-6102

Art. VII. Appeals and Remedies, §27-7100

Art. VIII. Cooperative Purchasing, §27-8100 - §27-8106

Art. IX. General Rules and Regulations, §27-9100 - 27-9102

Appendix 1. Purchasing Policy and Procedure

ARTICLE I. GENERAL PROVISIONS

DIVISION 1. PURPOSE AND APPLICATION

SEC. 27-1100. TITLE.

This chapter, along with any policies adopted pursuant thereto, shall be known as the "Moline Purchasing Code."

SEC. 27-1101. PURPOSE.

The purpose of this chapter is to provide for the fair and equitable treatment of all persons involved in public purchasing by the City, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

SEC. 27-1102. APPLICATION.

(a) This Code applies to contracts for the procurement of supplies, services, and construction, entered into by the City after the effective date of this ordinance, unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by any City department for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal or state assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal or state laws and regulations. Nothing in this ordinance shall prevent any City department from complying with the terms and conditions of any grant, gift, or request that is otherwise consistent with law. This chapter is adopted pursuant to the City's home rule powers and, where inconsistent, shall supersede any state requirements unless otherwise specified herein.

(b) Violation of any part of this Chapter 27 shall be deemed an ordinance violation punishable as set forth in Section 1-1107 of the Moline Code of Ordinances.

SEC. 27-1103. FILING OF PURCHASING POLICY; PUBLIC ACCESS; FEES.

The policy adopted and amended pursuant to Sec. 27-2101 shall be kept on file in the office of the city clerk and shall be available for public review at any time. Members of the public or interested vendors of the City may obtain a copy of said Policy by payment to the city clerk of an

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appropriate fee; said fee to be identical to that allowed for public records pursuant to the Freedom of Information Act.

DIVISION 2. DEFINITIONS

SEC. 27-1200. GENERAL.

Terms not defined herein shall have the meaning ascribed to them in Sec. 1-1101 of the Moline Code of Ordinances or, if no definition is contained therein, in the American Bar Association's Model Procurement Code for State and Local Governments, 2000 Edition and the Model Procurement Regulations, 2002 Edition.

SEC. 27-1201. DEFINITIONS.

(1) Architect-~~Engineer~~ and Land Surveying Services. Those professional services within the scope of practice of architecture, professional engineering, or land surveying as defined by **Section 5 of the Illinois Architecture Practice Act, Section 4 of the Professional Engineering Practice Act, and Section 5 of the Illinois Professional Land Surveyor Act, respectively.** ~~the laws of the state.~~

(2) Change Order. A written order signed and issued by the appropriate purchasing official of the City or designee, **unilaterally** directing the contractor to make changes which the "changes" clause of the contract **or purchase order** authorizes the City to order without the consent of the contractor.

(3) **Competitive Sealed Bidding. The process whereby the City accepts sealed bids after issuing public notice in accordance with the terms of this Chapter.**

(4) **Competitive Sealed Proposal. The process whereby the City accepts sealed proposals after issuing public notice in accordance with the terms of this Chapter.**

(5) Confidential Information. 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 knowledge or available to the public on request.

(6) Construction. The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property, or the addition thereto of equipment.

(7) Contract. All types of City agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.

(8) 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 Activity.

(9) Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

(10) Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have actually been incurred by the contractor in performing the contract.

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(11) Cost-Reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and provisions of this chapter, and a fee or profit, if any.

(12) Designated Professional Services – Professional Services as defined hereinafter, excluding architect, engineering, and land surveying services.

(13) Emergency Procurement. Purchases of supplies, services, construction or other work necessitated by a probable, imminent or continuing threat to the property of the City or the public health, safety, welfare or property of the City, its residents, workers, or visitors.

(14) Invitation for Bids . All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

(15) Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

(16) Pricing Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices, and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

(17) Procurement . The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(18) Professional Services – Services within the scope of a particular area of practice; such as the practice of accounting, architecture, landscape architecture, land surveying, law (inclusive of bond counsel services), financial services including without limitation financial advisors, accountants, banking services, credit rating agencies, and auditing services; professional engineering, real estate appraising, safety and security risk assessment, computer and data assessment and services, physicians, attorneys, and dentists or other such areas of expertise as defined by State law.

(19) Public Agency. A public entity subject to or created by the City, (e.g. a City department).

(20) Public Procurement Unit . Means either a Local Public Procurement Unit, a State Public Procurement Unit or an External Procurement Activity. A Local Public Procurement Unit means any county, city, town, and any other subdivision of the state 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 supplies, services and construction, and any nonprofit corporation operating a charitable hospital. An External Procurement Activity means any buying organization not located in this state which, if located in this state, would qualify as a Public Procurement Unit. An agency of the United States is an External Procurement Activity.

(21) Public Works. Shall have the meaning ascribed in 820 ILCS 130/2, as interpreted by the Illinois Department of Labor.

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(22) Purchasing Official. Shall mean that person designated by ordinance, or the city administrator, to procure a particular supply, service, product, item, or construction. For differing procurement, the official designated may be a different person.

(23) Qualified Products List . An approved list of supplies, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the City has determined will meet the applicable specification requirements.

(24) Request for Proposals . All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(25) Responsible Bidder or Offeror . A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

(26) Responsive Bidder . A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

(27) Services . 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. This term shall not include employment agreements or collective bargaining agreements.

(28) Specification . Any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item for delivery.

(29) State Public Procurement Unit. Means the Office of the Chief Procurement Officer and any other Purchasing Agency of this State.

(30) Supplies. All property, including, but not limited to, equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

DIVISION 3. PUBLIC ACCESS TO PROCUREMENT INFORMATION

SEC. 27-1300. PUBLIC ACCESS TO PROCUREMENT INFORMATION.

Procurement information shall be a public record to the extent provided in the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.) and 720 ILCS 5/33E-1 et seq., and shall be available to the public as provided in such statutes.

ARTICLE II. PURCHASING RESPONSIBILITIES OF CITY OFFICERS AND EMPLOYEES

SEC. 27-2100. RESPONSIBILITIES.

In accordance with this chapter, and subject to the supervision of the city administrator, the appropriate purchasing official **or his or her designee** shall procure or supervise the procurement of the supplies, services, or construction, as assigned by ordinance or the city administrator, and shall establish and maintain programs for specifications development, contract administration, and inspection and acceptance, within the particular department of each such appropriate purchasing official, all of which programs shall comply with the Moline Purchasing Code.

SEC. 27-2101. RULES AND OPERATIONAL PROCEDURES.

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Consistent with this chapter, and with the approval of the City Council, by special ordinance, the city administrator may adopt operations procedures and other policies relating to the execution of this chapter.

SEC. 27-2102. DELEGATIONS TO OTHER OFFICIALS.

- (a) Unless and until disapproved by the City Council on a case-by-case basis, the city administrator may delegate authority to purchase supplies, services, or construction items to other officials or employees, if such delegation is deemed necessary for the effective procurement of those items.
- (b) Procurement authority for all construction, construction or demolition of Public Works; architect-, engineer and land surveying services; and other professional services such as land appraisal contracts for roads, bridges, sidewalks, storm drains, and other projects funded by Motor Fuel Tax funds; Illinois or U.S. Department of Transportation grants, funds, or contracts; or special assessments is hereby delegated to the ~~Director of Engineering~~ Director of Engineering or said Director of Engineering's designee with the approval of the city administrator.
- (c) Procurement authority for all legal services; legal representation or assistance; and other professional legal services is hereby delegated to the law director and as necessary to comply with Sec. 2-3203(e) of the Moline Code of Ordinances with the approval of the city administrator.
- (d) Procurement authority for intergovernmental purchases shall be assisted by the city administrator and other officials as provided by the intergovernmental agreement providing for said intergovernmental purchases.
- (e) Procurement authority for all financial services is hereby delegated to the Finance Director or said Director's designee with the approval of the City Administrator.
- (f) Procurement authority related to the construction, operation or maintenance of sanitary or storm sewer facilities and appurtenances, and of all water treatment facilities and appurtenances is hereby delegated to the Director of Utilities or said Director of Utilities' designee with the approval of the city administrator.

SEC. 27-2103. AUTHORITY TO CONTRACT.

- (a) Purchases or leases of any supply, service, product, equipment, item, or construction of whatever nature, whose estimated costs do not exceed \$5,000, may be made by any supervisory-level employee of the department needing such item pursuant to the provisions of this Chapter.
- (b) Purchases or leases of any supply, service, product, equipment, item, or construction of whatever nature, whose estimated costs range from \$5,001 to \$15,000, may be made by the director of the relevant department pursuant to the provisions of this Chapter, unless the procurement authority therefore is delegated to a particular person(s) by Section 27-2102.
- (c) Purchases or leases of any supply, service, product, equipment, item, or construction of whatever nature, whose estimated costs range from \$15,001 to \$25,000, may be made by the director of the relevant department with the advance approval of the City Administrator.

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- (d) Purchases or leases of any supply, service, product, equipment, item, or construction greater than \$25,000 up to \$100,000 shall be made or awarded in accordance with this Chapter by the City Administrator and Finance Director jointly or, for projects within the scope of Section 27-2102(b), the Director of Engineering and Finance Director, or, for projects within the scope of Section 27-2102(f), the Director of Utilities and Finance Director, shall jointly award contracts in the amount of \$25,001 up to \$100,000. All contracts in excess of \$100,000 shall be awarded by the City Council.
- (e) No purchase shall be made unless an appropriation therefor has been made by the City Council. The cost of the purchases by the City shall not exceed the appropriation ordinance for the relevant fiscal year.
- (f) Prior to the issuance of any purchase order, contract, change order or contract modification, the Finance Director or his or her designee shall certify that sufficient budgeted funds are available.
- (g) Whenever any official or employee of the City purchases or contracts for any supplies, services, products, equipment, items, or construction beyond the scope of his or her authority or otherwise contrary to the provisions of this Chapter or the rules and regulations made pursuant to this Chapter, such order or contract shall be void and of no effect unless ratified by an official with proper authority based on the expenditure level. Such ratifications shall be promptly reported to the City Administrator.
- (h) Each officer or employee of the City who shall make a purchase on the credit of the City in any manner other than is authorized by ordinance shall be liable for the amount of such purchase(s) personally and on his or her bond.

SEC. 27-2104. SMALL PURCHASE PROCEDURES.

All purchases not exceeding \$25,000 shall be made in accordance with this Section.

(a) Purchases Equal to or Less than \$2,499.99.

Purchases at this level do not require informal quotes unless specifically requested by the employee's Supervisor, Department Director, City Administrator or the City Council.

(b) Purchases \$2,500.00-\$4,999.99

Purchaser must obtain three (3) informal quotes. Quotations do not need to be solicited by public advertisement, but may be solicited by either oral or written invitation and may be tendered orally or in writing. If fewer than three (3) informal quotations are received, the Supervisor or his or her designee shall prepare a written explanation that no additional quotations were obtained despite reasonable efforts to do so and explain the efforts undertaken to obtain quotes from at least three sources. Award may be made notwithstanding the limited number of responsive quotations. Upon approval by the Supervisor, the award is made to the lowest responsible quote meeting the specifications, delivery date, and other required terms and conditions of purchase.

(c) Purchases \$5,000.00-\$14,999.99

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Purchaser must obtain three (3) informal quotes. Bids do not need to be solicited by public advertisement, but should be solicited by oral or written invitation that makes express reference (as appropriate) to the Prevailing Wage Act and other legal requirements. Quotations shall be in writing. If fewer than three (3) informal quotations are received, the Department Director or his or her designee shall prepare a written explanation that no additional quotations were obtained despite reasonable efforts to do so and explain the efforts undertaken to obtain quotes from at least three sources. Award may be made notwithstanding the limited number of responsive quotations. Upon approval by the Department Director, the award is made to the lowest responsible quote meeting the specifications, delivery date, and other required terms and conditions of purchase.

(d) Purchases \$15,000.00-\$24,999.99

Purchaser must obtain three (3) informal quotes. Bids do not need to be solicited by public advertisement, but should be solicited by written invitation that makes express reference (as appropriate) to the Prevailing Wage Act and other legal requirements. Quotations shall be in writing. If fewer than three (3) informal quotations are received, the Supervisor or his or her designee shall prepare a written explanation that no additional quotations were obtained despite reasonable efforts to do so and explain the efforts undertaken to obtain quotes from at least three sources. Award may be made notwithstanding the limited number of responsive quotations. Upon approval by the Department Director with the advance approval of the City Administrator, the award is made to the lowest responsible quote meeting the specifications, delivery date, and other required terms and conditions of purchase.

(e) Exceptions to Subsections (b), (c) and (d), requiring (3) informal quotes include purchases of Professional Services, sole suppliers, emergency procurement, and those instances where the City Council has found that the nature of the goods or services are such that factors other than the proposed pricing should receive consideration.

(f) Purchases \$15,000.00-\$24,999.99

Purchaser must obtain three (3) written quotes. Bids do not need to be solicited by public advertisement, but should be solicited by written invitation that makes express reference (as appropriate) to the Prevailing Wage Act and other legal requirements. Quotations shall be in writing. Upon approval by the Department Director and the City Administrator or Finance Director, the award is made to the lowest responsible quote meeting the specifications, delivery date, and other required terms and conditions of purchase.

SEC. 27-2105. PURCHASES EXCEEDING \$25,000 BUT LESS THAN \$100,000 NOT REQUIRING COMPETITIVE SEALED BIDDING.

All purchases of supplies, services or equipment exceeding \$25,000 other than such purchases qualifying as Public Works requiring competitive sealed bidding as provided in this Chapter shall require the purchaser to solicit a minimum of five (5) written quotations following a public advertisement providing reasonable notice. If fewer than five (5) written

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quotations are received, one of the Purchasing Officials shall prepare a written explanation that no additional quotations were obtained despite reasonable efforts to do so and explain the efforts undertaken to obtain quotes from at least five sources. Award may be made notwithstanding the limited number of responsive quotations. Quotations shall be in writing. Upon joint approval by the City Administrator and Finance Director, the award is made to the lowest responsible quote meeting the specifications, delivery date, and other required terms and conditions of purchase.

ARTICLE III. SOURCE SELECTION AND CONTRACT INFORMATION
DIVISION 1. METHODS OF SOURCE SELECTION

SEC. 27-3100. COMPETITIVE SEALED BIDDING.

- (a) Conditions for Use. All contracts of the City **for Public Works or other public improvements made by or on behalf of the City which is not to be paid for in whole or in part by special assessment or special taxation, when the expense is in excess of the greater of (i) twenty-five thousand dollars (\$25,000.00) or (ii) such other minimum threshold as is established in Section 8-9-1 of the Illinois Municipal Code (65 ILCS 5/8-9-1) as amended from time to time (the "Competitive Bid Threshold"),** shall be awarded by competitive sealed bidding, as provided for in the Moline Purchasing Code, **unless waived by a vote of two-thirds of all alderpersons then holding office or where the contract pertains to ~~except for~~ the following subject matters (in which case no supermajority competitive bidding waiver is necessary):**
1. Competitive Sealed Proposals (Sec. 27-3101)
 2. Sole Source Procurement (Sec. 27-3105)
 3. Emergency Procurements (Sec. 27-3106)
 4. Public Announcement and Selection Process (Sec. 27-5200)
 5. Contracting for Designated Professional Services (Sec. 27-5201);
 6. **When the City's own employees perform the Public Works project or other public improvement without an outside contractor, then such labor, even when the cost thereof exceeds the Competitive Bid Threshold, shall be excluded from competitive bidding requirements, provided that all material exceeding the Competitive Bidding Threshold used in the construction of such Public Work or other public improvement, shall be purchased by contract let to the lowest responsible bidder.**
 7. **Any collective bargaining agreement or employment contracts to which the City is a party.**
 8. **Any purchase, sale or lease of real property to which the City is a party.**
 9. **Contracts entered into pursuant to economic development agreements.**
 10. **Contracts for supplies, equipment or services not related to Public Works or public improvements.**
 11. **Contracts with or purchases from the federal government or any agency thereof.**

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(b) Invitation for bids/public notice. An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement. All notices of request for bids shall be given to the appropriate purchasing official prior to publication. Adequate public notice of the invitation for bids shall be given a reasonable time, not less than ten (10) calendar days prior to the date set forth therein, for the opening of bids. Such notice may, but need not, include publication in a newspaper of general circulation **and posting on the City's official website** and shall state the place, date, and time of bid opening. **The purchasing official or his or her designee may additionally advertise for bids in recognized trade journals.** Tabulations are required for all purchases over \$124,999.99 and must be prepared by the appropriate purchasing official.

(c) Bid evaluation, recommendation and acceptance.

(1) Bids shall be unconditionally received without alteration or correction, except as authorized in the Moline Purchasing Code. Bids shall be evaluated based on the requirements set forth in Moline Code of Ordinances and in the invitation for bids, which may include additional criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, availability of support services, compatibility with existing systems and equipment of the City, and suitability for a particular purpose. The City may also research and consider all publicly available information about the Bidder that is relevant to the published criteria. The criteria may also include information about cost, such as discounts, transportation costs, and total or life cycle costs. Telegraphic, electronic mail, facsimile, or other similar forms of bid submitted shall not be accepted unless specifically permitted by the terms of the invitation for bid. Only bids signed by a person authorized to sign a bid will be accepted. All bids and formal contracts shall be approved as to form by Corporate Counsel.

(2) For any project for the construction or demolition of any **Public Works** ~~“public works” as defined in 820 ILCS 130/2, as interpreted by the Illinois Department of Labor~~, where the contract sum equals or exceeds \$75,000, the City shall consider all of the following criteria to determine the lowest responsive and responsible bidder and, therefore, each bidder shall certify or otherwise supply information concerning all of the following:

a. Corporate standing and authority to transact business within the State of Illinois, including but not limited to current registration with the Illinois Department of Revenue, and the Illinois Department of Employment Security.

b. Evidence of compliance with:

- i. Federal Employer Tax Identification Number or Social Security Number (for individuals).
- ii. "Equal Opportunity Employer" and Sexual Harassment Policy and Training requirements and provisions.

c. Evidence of insurance coverage, including (but not limited to): general liability, workers' compensation, automobile, hazardous occupation, pollution, product liability and professional liability.

d. Participation in apprenticeship and training programs applicable to the work to be performed on the project which are approved and registered with the United States Department of Labor's

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Office of Apprenticeship and Training (the City may require evidence, including a copy of all applicable apprenticeship standards and agreements for any apprentice(s) who will perform work on the public works project).

e. Compliance with all the provisions of the Illinois Prevailing Wage Act, including wages, medical and hospitalization insurance and retirement for those trades as covered in the Act.

f. Disclosure of the names and address of each subcontractor from whom the contractor has accepted a bid and/or intends to hire on any part of this project.

g. A copy of the written program for the prevention of substance abuse. Bidder shall also certify that only workers that are enrolled and tested in company-based controlled substance and alcohol testing programs will be allowed to participate on the project.

h. Statements as to past performances, which shall give an accurate and complete record of all work projects completed in the last three (3) years by the contractor.

i. The contractor and officers of the contractor disclose any tax lien or delinquency and any lien, determination or judgment concerning the contractor's failure to pay benefits in the last five (5) years.

j. Bidder shall certify that all employees expected to perform work on the project have completed a 10-hour or greater OSHA safety program within the last five (5) years. Only workers that have satisfactorily completed a 10-hour or greater OSHA safety program will be allowed to participate on the project. The bidder must have copies of employee OSHA cards on file, and the City may request the bidder provide copies of employees' OSHA cards; failure to produce an employee's OSHA card may result in a determination that the bidder is not a responsible bidder.

k. Bidder shall commit to employ local workers with strong consideration given to bidders employing residents of the City of Moline and/or the State of Illinois or explain in writing why such a commitment is not feasible or practical.

l. Bidder provides written record of compliance with State of Illinois Equal Employment Opportunity requirements for public works projects, including the hiring of women and minority workers to perform the contracted work.

m. Any other factors which are relevant to the determination of a bidder's ability to carry out the requirements of the project in accordance with what may be expected or demanded under the terms of the contract. Where required by State law or the terms of a grant, the ability of the bidder to fulfill MBE/WBE/DBE/VBE requirements may apply.

(3) The Director of Engineering is authorized to develop, on an annual basis, a list of prequalified "responsible bidders" for the purpose of soliciting bids and making a market for the contracts proposed to be let by the City. Following the completion or termination of any contract let under this section, the Director of Engineering assigned to the Project shall, together with the Director of Public Works, evaluate the performance of the contractor and prepare a written report to the Director of Engineering (that shall also be available to City Council) and the Director of Engineering may consider that report as a preliminary memorandum for the Director's use in evaluating and updating the list of pre-qualified responsible bidders accordingly. A contractor that is not included on the list of pre-qualified bidders or removed from the list of pre-qualified bidders may appeal the decision of the Director of Engineering to the City Administrator for final determination.

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(4) The Director of Engineering shall present all recommendations to disqualify a contractor as “not responsible” for any project let under this Section to the City Administrator who, after consulting with Corporate Counsel, shall make the determination as to whether the bidder is a responsible bidder. Any bidder that the City Administrator determines is not “responsible” may have the right of appeal to the full City Council unless exigent circumstances concerning the timing of the work to be performed that was the subject of the bidding process make such an appeal impractical.

(d) Bid opening; receipt; procedure. The receipt and opening of all bids shall follow the procedures set forth hereinbelow:

(1) All sealed bids shall be received by the ~~appropriate purchasing official~~ City Clerk, as set forth in the advertised invitation or notice, ~~except for bids related to Parks or the Library, which shall be subject to such procedures as directed by the respective board of each; provided, however, that nothing herein shall be construed so as to prohibit voluntary compliance with these procedures by said boards or either or them.~~

(2) The appropriate purchasing official, accompanied by the City Clerk, shall publicly open and read aloud all bids as published in the invitation for bids.

(3) The appropriate purchasing official or City Clerk shall record the bid information and maintain the bid file. At a minimum, the bid file shall include the amount of each bid, the name of each bidder, bid documents, and such other relevant information as the appropriate purchasing official directs, in writing, to include. The bid documents shall be retained for at least seven (7) years or as required by the State of Illinois (Local Records Unit). The bid file and procurement information shall be open for public inspection as provided in the Freedom of Information Act (5 ILCS 140/1 et seq.) and 720 ILCS 5/33E-1 et seq. and subject to the terms, qualifications and exceptions of each such act.

(4) The soliciting department shall provide such information, as deemed necessary by the department director, to the purchasing official, City Administrator and/or Finance Director, Committee-of-the-Whole of the City Council ~~or appropriate board~~ vested with authority to award the contract in accordance with the terms of this Chapter.

(5) The requirements of this section shall not apply to contracts awarded by methods other than competitive sealed bidding, which are referenced in Section 27-3100(a); provided, however, such referenced methods may not be used solely as a means to avoid compliance herewith.

(e) Award.

i. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids unless all bids are rejected.

ii. The City Administrator and Finance Director or, for projects within the scope of Section 27-2102(b), the Director of Engineering and Finance Director, or, for projects within the scope of Section 27-2102(f), the Director of Utilities and Finance Director, shall jointly award contracts in the amount of \$25,001 up to \$100,000. All contracts in excess of \$100,000 shall be awarded by the City Council.

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iii. In the event the lowest responsible and responsive bid for a construction project exceeds available funds, as certified by the finance director, and such bid does not exceed such funds by more than five percent (5%), the city administrator or designee is authorized, when time or economic considerations preclude solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the lowest responsible and responsive bidder in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids.

(f) Non-effective notice; procedures. When the public notice prescribed in Section 27-3100(b) is non-effective, or has historically been non-effective in terms of producing competitive bidding on public projects, or when it is believed such notice will be non-effective because of an insufficient supply of local or responding vendors, then the appropriate purchasing official may so find in writing, stating the reasons therefore in detail. Upon making such written finding, said appropriate purchasing official may, in addition to such required public notice, and after diligent search for other vendors, directly solicit all known vendors of the product, **service or construction** and provide such solicitation to any member of the public, so long as such solicitation at all times maximizes competition and is conducted in the best interests of the City and fair, equitable, and competitive pricing.

(g) Award to other than lowest bidder. When the contract award is not recommended to be given or is not given to the lowest responsive bidder, a written statement of the reasons for such award recommendation shall be made by the purchasing official.

(h) Waiver of defects. In awarding a contract pursuant to sealed competitive bidding, the purchasing official or City Council may waive any variation from the bid requirements or defect in a bid which does not materially affect the competitive nature of the bid, is not in violation of any ordinances, statute or law and does not prejudice the rights of the public. A variance or defect does not materially affect the bid if the terms are clear and unambiguous, the bid contains all essential elements of the contract, if the amount or competitive nature of the bid is not affected and if the bidder has not received an unfair advantage by virtue of the variance or defect. In considering any waiver, the purchasing official or City Council shall make such determination in a manner as to fairly and reasonably accomplish such purpose with sole reference to the public interest.

(gi) Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted by the City where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written, telegraphic, electronic mail, or facsimile notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended; such corrections shall only be made if they are in the best interests of the City. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may, in the City's discretion, be permitted to withdraw its bid if:

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(1) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

(2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the city administrator.

(hj) Multi-step sealed bidding. When it is considered impractical to prepare initially 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 determined to be technically acceptable under the criteria set forth in the first solicitation.

(ik) Tie bid. In the unlikely event that any bid, proposal, quotation, or other offer are in all respects equal, then separate equal size sheets of paper shall be placed in a hat, bearing the name of each separate identical bidder, and the mayor shall draw one sheet of paper at the next City Council meeting. The name of the bidder on such sheet as drawn by the mayor shall then be awarded the contract.

SEC. 27-3101. COMPETITIVE SEALED PROPOSALS.

(a) Conditions for use. Unless otherwise directed by the Moline Purchasing Code, when **competitive bidding is otherwise required pursuant to the terms of Section 27-3100(a), but** the appropriate purchasing official determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by use of the competitive sealed proposal method.

The words “practicable” and “advantageous” are to be given ordinary dictionary meanings. This section shall be interpreted broadly, so as to encourage flexibility of the appropriate purchasing official in achieving the purposes set forth in Sec. 27-1101.

(b) Request for Proposals. Proposals shall be solicited through a request for proposals. The request for proposals shall state the relative importance of price and other evaluation factors.

(c) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 27-3100(b) (Competitive Sealed Bidding, Invitation for Bids/Public Notice); provided that the minimum time shall be ten (10) calendar days unless the appropriate purchasing official determines in writing that emergency conditions dictate a shorter time period.

(d) Receipt of Proposals. No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

(e) Discussion with Responsible Offerors and Revisions to Proposals. As provided in the request for proposals **and in contrast with the City’s competitive sealed bidding procedures,** discussions may be conducted with “responsible offerors” who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals

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and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussion, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors. For any project for the construction or demolition of any Public Works, where the contract sum equals or exceeds \$75,000, the City shall consider the requirements of Section 27-3100(c) to determine the lowest “responsible offeror.” **The City Administrator and Finance Director or, for projects within the scope of Section 27-2102(b), the Director of Engineering and Finance Director, or, for projects within the scope of Section 27-2102(f), the Director of Utilities and Finance Director shall jointly award contracts in the amount of \$25,001 up to \$100,000. All contracts in excess of \$100,000 shall be awarded by the City Council.**

(f) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, and in the City's best interest, 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 evaluation. The contract file shall contain a detailed description of the basis on which the award is made.

SEC. 27-3102. CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS.

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation or otherwise, when it is for good cause or in the best interests of the City. The reasons therefor shall be made part of the contract file. Each solicitation issued by the City shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause or when in the best interests of the City as the City, in its sole and exclusive discretion, may determine. Notice of cancellation shall be sent to all businesses solicited, or from whom bids or proposals were received. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

SEC. 27-3103. CHANGE ORDERS; AUTHORITY AND LIMITATION.

A. The City shall be bound by and liable only for those change orders or contract modifications authorized in accordance with Sections 27-3103 and 3104. When a contract has been awarded by competitive bidding pursuant to Sec. 27-3100, a A change order in a contract for supplies, equipment or services not subject to competitive bidding under Section 27-3100 may be issued by the appropriate purchasing official in an amount up to his/her/their authorized expenditure limit as set forth in this Chapter (which for construction purposes shall be the Director of Engineering) in an amount of not more than twenty five thousand dollars (\$250,000.00) prior to approval by the City Council; provided, however, that all the following restrictions apply:

- (a) i.** The change order is within budgeted amounts;
- (b) ~~The change order is for additional products or services competitively bid~~**
- (b) ii.** The need for the product or service was not anticipated at the time of award;

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- (e) iii. The change order is in the best interest of the City; and
- (d) iv. The amount of the change order or contract modification does not exceed the contract contingency amount, if any, established at the time of awarding the original contract.
- B. If the aggregate dollar amount of every contract modification, change order, or contract price adjustment for a single project exceeds one hundred thousand dollars (\$100,000.00), such modification(s), change order(s) and adjustment(s) shall be subject to prior approval by the City Council after receiving a report from the purchasing official as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.
- C. Except as otherwise provided in Sections 27-3103(A) or (B) or 27-3104(A) or (B), the City Council shall approve all change orders and contract modifications.

SEC. 27-3104. CHANGE ORDERS; CAPITAL IMPROVEMENTS.

- A. The City shall be bound by and liable only for those change orders or contract modifications authorized in accordance with Sections 27-3103 and 3104 and in accordance with the Illinois Public Works Contract Change Order Act, 50 ILCS 525/1, et seq. When a contract for a Public Works capital improvement project has been awarded by competitive bidding pursuant to Sec. 27-3100, a change order may be issued by the appropriate purchasing official ~~Director of Engineering, the director of public works~~ and/or the city administrator prior to the approval by the City Council, said change order not to exceed the amount of the purchasing official's authorized expenditure limit as set forth in this Chapter ~~twenty thousand dollars (\$205,000.00) for contracts less than one hundred thousand dollars (\$100,000.00) or, for change orders exceeding the lesser of fifty~~ twenty-five ~~thousand dollars (\$5025,000.00) or ten percent (10%) of the contract price up to a maximum of one hundred thousand dollars (\$100,000), the change order may be issued by the joint action of the Director of Engineering and Finance Director, prior to the approval by the City Council, for contracts of one hundred thousand dollars (\$100,000.00) or more;~~ provided, however, that all the following restrictions apply:
 - (i) The change order is within budgeted amounts;
 - (ii) The amount of the change order or contract modification does not exceed the contract contingency amount, if any, established at the time of awarding the original contract.
 - (iii) The need for products or services was not anticipated at the time of award;
 - (iv) The need to accommodate unknown or unforeseen events occurring in the field;
 - (v) That the City Council be informed of the change order in a timely manner, but in no case later than the next applicable committee-of-the-whole meeting;
 - (vi) That waiting for prior Council approval would delay the project;
 - (vii) The change order is in the best interest of the City; and
 - (viii) The change order does not exceed 50% of the original contract price.

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- B. All change orders in excess of \$100,000 shall be awarded by the City Council. No change orders that would result in an increase in the original contract amount of 50% or more shall be authorized. In such cases where the change order would increase the original contract amount by 50% or more, the portion of the contract subject to the change order must be competitively bid in accordance with the original bidding procedures.**
- C. Except as otherwise provided in Sections 27-3103(A) or (B) or 27-3104(A) or (B), the City Council shall approve all change orders and contract modifications.**

SEC. 27-3105. SOLE SOURCE PROCUREMENT.

Notwithstanding any other provisions in this Chapter, Aa contract for (i) Public Works or other public improvements made by or on behalf of the City which is not to be paid for in whole or in part by special assessment or special taxation, when the expense is in excess of the Competitive Bid Threshold; (ii) a contract or purchase order for Public Works or other improvements made by or on behalf of the City when the expense is less than the Competitive Bid Threshold, and (iii) a contract or purchase order in any amount for supplies, equipment, service or a construction item may be awarded without competitive sealed bidding or any other form of competition when the appropriate purchasing official determines in writing, subject to review and approval of the city administrator, after conducting a good faith review of available sources, that there is only one source for the Public Works project or other public improvement or the required supply, equipment, service, or construction item. The appropriate purchasing official or his or her designee shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the Public Works project or other public improvement or other item(s) or service procured under each contract or purchase order, and the identification number of each contract file. Final approval of such sole source contract or purchase order shall be only by the City Council or such person(s) as are vested with authority by this Chapter to bind the City to such contract based on the amount of the expenditure.

SEC. 27-3106. EMERGENCY PROCUREMENTS.

Notwithstanding any other provisions of this ~~Chapter~~**ordinance**, the appropriate purchasing official may make or authorize others to make emergency procurements of supplies, services, **construction or other work necessitated by a probable, imminent or continuing threat to the property of the City or the public health, safety, welfare or property of the City, its residents, workers, or visitors in an amount up to \$100,000** ~~or construction items when there exists a threat to public health, welfare, or safety, or where conditions exist such that a threat to public health, welfare, or safety is probable or imminent~~; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be **drafted by the appropriate purchasing official and** included in the contract file. For purchases less than two thousand, five hundred dollars (\$2,500.00), the purchase order or purchase card transaction may constitute the "contract file" required herein. As soon as practicable, a record of each emergency procurement shall be made **by the purchasing agent** and shall set forth the contractor's name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification number of the contract file. **Notwithstanding provisions of this Chapter reserving final approvals of expenditures exceeding \$100,000 to the City**

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Council, Emergency Procurements exceeding \$100,000 may be authorized by the City Administrator and Finance Director or, for projects within the scope of Section 27-2102(b), the Director of Engineering and Finance Director, or, for projects within the scope of Section 27-2102(f), the Director of Utilities and Finance Director, shall jointly approve such Emergency Procurement. The record of any Emergency Procurement shall be reported to the City Council at its next regularly scheduled meeting.

SEC. 27-3107. COST OR PRICING DATA.

(a) Required Submissions Relating to the Award of Contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed one hundred thousand dollars (\$100,000.00) and is to be awarded by competitive sealed proposals pursuant to Sec. 27-3101 (Competitive Sealed Proposals), or by sole source procurement authority pursuant to Sec. 27-3105 (Sole Source Procurement).

(b) Exception. The submission of cost or pricing data relating to the award of a contract is not required when:

- (1) The contract price is based on adequate price competition;
- (2) The contract price is based on established catalogue prices or market prices;
- (3) The contract price is set by law or regulation; or

(4) It is determined in writing by the appropriate purchasing official ~~or, if a capital project, the public works director~~, that the requirements of Sec. 27-3108 (Cost or Price Analysis) may be waived, and the determination states the reasons for such waiver.

(c) Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed ten thousand dollars (\$10,000.00).

(d) Exceptions. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

(1) Unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or

(2) It is determined in writing by the appropriate purchasing official ~~or, if a capital project, the public works director~~, that the requirements of Sec. 27-3107(c) (Cost or Pricing Data; Required Submissions Relating to Change Orders or Contract Modifications) may be waived, and the determination states the reasons for such waiver; or

(3) The City department or division submits a certification demonstrating that the changes comply with 720 ILCS 5/33E-1 et seq.

(e) Certification Required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this rule, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

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(f) Price Adjustment Provision Required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating 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 was inaccurate, incomplete, or not current as of the date agreed upon between the City and the contractor.

SEC. 27-3108. COST OR PRICE ANALYSIS.

A cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under Sec. 27-3100 (Competitive Sealed Bidding) except as the City Council directs otherwise, from time to time, by a written purchasing policy. A written record of such cost analysis or price analysis, when required, shall be made a part of the contract file.

SEC. 27-3109. BID AND PERFORMANCE BONDS ON SUPPLY OR SERVICE CONTRACTS.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the appropriate purchasing official deems advisable to protect the City's interests. **In such cases, the contractor or vendor shall post a surety bond in the amount of the contract in order to ensure full and faithful performance of the contract in accordance with its terms and the payment for the material and labor, if any, used in such completion. The bond shall be executed on a form provided by or otherwise deemed acceptable as to form by the City.**

SEC. 27-3110. Reserved. FISCAL RESPONSIBILITY.

~~—Every contract modification, change order, or contract price adjustment in excess of twenty thousand dollars (\$20,000.00) under a construction contract with the City shall be subject to prior approval by the City Council after receiving a report from the department director as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.~~

DIVISION 2. RIGHTS AND RESPONSIBILITIES**SEC. 27-3200. CONTRACT RENEWALS; NON-COMPETITIVE.**

Contract renewals which are maintenance contracts or contracts of service, which are not ~~subject to competitive bidding practices generally~~ **for Public Works in excess of the Competitive Bidding Threshold**, may be executed by City staff **pursuant to the approval of the appropriate purchasing official, City Council or such person(s) as are vested with authority by this Chapter to bind the City to such contract renewal based on the amount of the expenditure. In order for a renewal to proceed without any competition, so long as** all of the following **must** apply:

(a) The written contract or other document is identical **in all material respects** to that executed in prior years and ~~approved as to form by the law director or, if not identical, then that such document is substantially similar to documents used in prior years, and~~ is ~~again~~ submitted, along with the original agreement, to the law director for ~~subsequent~~ review and approval as to form;

(b) The amount has been approved in the City's annual budget process;

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(c) The service **subject to renewal** ~~renewed on an annual basis in the contract~~ is not a contract for new service but only a renewal of existing service;

(d) The appropriate purchasing official has made a written determination that the item is not subject to competitive bidding or solicitation of competitive proposals and that such solicitation would not reduce or lessen the price of said service;

(e) That all performance bonds and/or appropriate insurance, for the particular contract or contract of service, if any is so required, is renewed in the City's then prevailing amounts or requirements. Any contract executed in accordance with this section, must be reviewed no less than bi-annually.

Provided that each of the foregoing requisites are satisfied, a ~~A~~ contract may be renewed or extended with the current vendor for a period of up to **the lesser of three (3) (x) five (5) years or (y) the term of the base agreement**, in conjunction **and in accordance** with Sections 27-3100 and 27-3300(b) of the Code. Conditions for extending those contracts ~~would include:~~

- i. **extensive preparation and execution** of documents **memorializing renewal terms; no change in price**
- ii. **an increase in price for the renewal term no greater than the lesser of:**
 - a. **(a) the increase of the most recently available Consumer Price Index for all Urban Consumers ("CPI-U") United States City Average for All Items as determined and published by the Bureau of Statistics of the United States Department of Labor 1982-84=100 (the "Index"), as compared with the price of the final year of the base contract sought to be renewed. By way of illustration, a base contract for services entered into for a July 2020 – June 2022 term may be renewed in accordance with this Section 27-3200 for up to two years, with a price increase not to exceed the inflationary increase from the most recently available Index over the Index associated with the July 2021 – June 2022 period; or**
 - b. **3.0% increase over the price of the final year of the base contract sought to be renewed; and**
- iii. **no material change in governing law statute** and/or labor agreement requirements **impacting the services or current vendor subject to renewal.**

Items falling into this category include, **by way of illustration and** without limitation:

- * Intergovernmental training programs(s).
- * Printing or engraving of bonds.
- * Contracts for utility service (i.e. lights, water, heat, telephone).
- * Evidences of indebtedness.
- * Governmental & Intergovernmental purchasing arrangements.
- * Certain computer/information services contracts.
- * Insurance contracts.

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~~* Auditing services.~~

~~* Financial services.~~

* Professional Services.

SEC. 27-3201. RESPONSIBILITY OF BIDDERS AND OFFERORS.

(a) Determination of Non-Responsibility. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the appropriate purchasing official. Without limitation, 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. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

(b) Right of Nondisclosure. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the City outside of the office of the appropriate purchasing official or the law director, without prior written consent by the bidder or offeror, except as otherwise required by law.

SEC. 27-3202. RIGHT TO INSPECT PLANT.

The City may, at reasonable times, inspect the part of the plant, place of business, or work site of a contractor or subcontractor at any tier, which is pertinent to the performance of any contract awarded or to be awarded by the City.

SEC. 27-3203. RIGHT TO AUDIT RECORDS.

(a) Audit of Cost or Pricing Data. The City may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to Sec. 27-3107 (Cost or Pricing Data) to the extent that, in the City's judgment, such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of final payment under the contract.

(b) Contract Audit. The City shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract.

DIVISION 3. TYPES OF CONTRACTS AND CONTRACT ADMINISTRATION

SEC. 27-3300. TYPES OF CONTRACTS.

(a) General Authority. Subject to the limitations of this section any type of contract which is appropriate to the procurement and which will promote the best interests of the City may be used;

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provided said contract is approved as to form by the law director **and** 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 contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

(b) Multi-Term Contracts.

(1) Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the City, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation, **if any**, and funds are available for the first fiscal period at the time of contracting; provided further that no such contract shall exceed a period of twenty years. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(2) Determination 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; and

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) Notwithstanding anything herein to the contrary, renewal of non-competitive multi-term contracts shall be as provided in Section 27-3200.

(4) 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 canceled and 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 unless otherwise agreed in such contract. The cost of cancellation may be paid from any appropriations available for such purposes.

(c) Multiple Source Contracting.

(1) General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the City's actual requirements is limited by the provision of Uniform Commercial Code Section 2-306(1) (810 ILCS 5/2-306-1).

(2) Limitations on Use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the provisions of this chapter or the written purchasing policy adopted from time to time by the City Council, as applicable. Multiple source awards shall not be made when a single award will meet the City's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

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(3) Contract and Solicitation Provisions. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:

a. The City shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and

b. The City shall reserve the right to take bids separately if the appropriate purchasing official approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the City.

(4) Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, the City shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

(5) Determination Required. The appropriate purchasing official shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

SEC. 27-3301. REPORTING OF ANTI-COMPETITIVE PRACTICES.

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the state's attorney and the law director.

SEC. 27-3302. CITY PROCUREMENT RECORDS.

(a) Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City in a contract file by the appropriate purchasing official.

(b) Retention of Procurement Records. All procurement records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules approved by the Illinois State Local Records Commission.

SEC. 27-3303. CONTRACT CLAUSES AND THEIR ADMINISTRATION.

(a) Contract Clauses. All City contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The appropriate purchasing official, ~~or, if a capital project, the public works director~~ or other City official specified in the written purchasing policy from time to time adopted by the City Council, after consultation with the law director, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:

(1) The unilateral right of the City to order in writing changes in the work within the scope of the contract;

(2) The unilateral right of the City to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;

(3) Variations occurring between estimated quantities of work in contract and actual quantities;

(4) Defective pricing;

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- (5) Liquidated damages;
- (6) Specified excuses for delay or nonperformance;
- (7) Termination of the contract for default;
- (8) Termination of the contract in whole or in part for the convenience of the City;
- (9) Suspension of work on a construction project ordered by the City; and
- (10) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract;
 - a. When the contract is negotiated;
 - b. When the contractor provides the site or design; or
 - c. When the parties have otherwise agreed with respect to the risk of differing site conditions.
- (b) Price Adjustments.
 - (1) Adjustments in price resulting from the use of contract clauses required by subsection (1) of this section shall be computed in 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; or
 - e. 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 clauses with adjustment of profit or fee as computed by the City, as accounted for in accordance with reference to costs principals and subject to the provisions of the City's chapter concerning purchasing.
 - (2) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Sec. 27-3107 (Cost or Pricing Data).
 - (c) Standard Clauses and Their Modification. The appropriate purchasing official, after consultation with and permission from the law director, may establish standard contract clauses for use in City contracts. If the appropriate purchasing official establishes any standard clauses addressing the subjects set forth in Sec. 27-3303(a), such clauses may be varied 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 invitation for bids or request for proposals.

SEC. 27-3304. CONTRACT ADMINISTRATION.

A contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained by each department or division for whom the contract is being performed. This provision shall be independent of any other requirement to maintain contracts or copies thereof imposed elsewhere in the Moline Purchasing Code.

Council Bill/General Ordinance No. 3029-2023**SEC. 27-3305. COST REIMBURSEMENT PROVISION.**

The City shall follow applicable federal rules and regulations or grant conditions whenever federal funds are used in a procurement and cost reimbursement principles are required by such rule, regulation, or grant condition. The appropriate purchasing official shall establish and require provisions relating to cost reimbursement contracts, and said provisions shall be followed whenever a cost reimbursement contract is awarded pursuant to the Moline Purchasing Code.

SEC. 27-3306. RESPONSIBILITY FOR SELECTION OF METHODS OF CONSTRUCTION CONTRACTING MANAGEMENT.

The appropriate purchasing official ~~public works director~~ shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the purchasing official ~~public works director~~ shall consider the City's requirements, its resources, and the potential contractors' capabilities. In determining which method to use, the purchasing official ~~public works director~~ shall consider the City's requirements, its resources and the capabilities of potential contractors. The appropriate purchasing official shall execute, and include in the contract file, a written statement setting forth the facts, which led to the selection of a particular method of construction contracting management for each project. Any final contract must be approved as to form by the law director and, for such contracts in excess of one hundred thousand dollars (\$100,000.00), selected by the public works director must still be approved by the City Council and approved as to form by the law director.

ARTICLE IV. SPECIFICATIONS**SEC. 27-4100. QUALIFIED PRODUCTS LIST.**

The appropriate purchasing official may designate a qualified products list; provided, the state or federal government has performed all necessary testing on the products listed thereon, the state or federal government has included said products on a qualified products list, and the appropriate purchasing official has determined that the state or federal government's specifications are sufficiently similar to City requirements to allow the use of the state or federal government's qualified products list in a City procurement.

SEC. 27-4101. BRAND NAME OR EQUAL SPECIFICATION.

(a) Use. Brand name or equal specification may be used when the appropriate purchasing official determines in writing that:

- (1) No other design or performance specification or qualified products list is available; or
- (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification; or
- (3) The nature of the product or the nature of the City's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (4) Use of a brand name or equal specification is in the City's best interests.

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(b) Designation of Several Brand Names. Brand names or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(c) Required Characteristics. Unless the appropriate purchasing official determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand names or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(d) Nonrestrictive Use of Brand Name or Equal Specification. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

SEC. 27-4102. BRAND NAME SPECIFICATION.

(a) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the appropriate purchasing official makes a written determination that only the identified brand name item or items will satisfy the City's need; such written determination shall be approved, in writing, by the city administrator prior to procurement.

(b) Competition. The appropriate purchasing official shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Sec. 27-3105 (Sole Source Procurement).

SEC. 27-4103. LEGAL REQUIREMENTS.

If a procurement is funded in whole or part by federal or state funds, then the specifications and general conditions or contract shall state all applicable requirements of federal or state public policy including but not limited to, and as applicable based on the funding source:

- (1) Equal employment opportunity;
- (2) Fair labor standards;
- (3) Energy conservation;
- (4) Prevailing wages;
- (5) Environmental protection;
- (6) Buy American or other labor or material preferences;
- (7) Affirmative action and contract set asides;
- (8) Wage, hour, and other contractor record keeping requirements;
- (9) Patent, copyright, and other intellectual property ownership protections; and
- (10) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (11) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

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(12) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(13) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;

(14) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;

(15) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in Section 27-4103(10) through (14); and

(16) Other similar socioeconomic programs.

In addition, the specifications and general conditions, or the contract, shall state any mandatory legal requirements, including, without limitation, and as applicable, compliance with the Solid Waste Disposal Act, Section 6002, as amended by the Resource Conservation and Recovery Act.

SEC. 27-4104 NEIGHBORHOOD IMPACT

(a) The Director of Engineering shall, in the course of design for each project involving the construction or demolition of a “public work” as defined in 820 ILCS 130/2, determine whether the project will, during the course of construction or demolition, have a significant impact on one or more businesses or residential households that are adjacent or proximate to the project location. For those projects that the Director of Engineering determines will have such an impact, the Director of Engineering shall, prior to publishing the plans and specifications to the market, host a meeting (which may be conducted by electronic means) at which the design professionals for the project will present the project and during which the neighboring properties (owners and tenants) will have an opportunity to comment and raise concerns. The Director of Engineering shall cause notice of the meeting to be given to the neighboring properties by mail, signage and notice on the City website. The design professionals shall, as reasonable, consider the concerns of the neighboring properties when completing the plans and specifications to be presented to the market. The meeting shall be held sufficiently in advance of issuing the bid to allow concerns to be considered and the project documents amended prior to bidding.

(b) For any project involving the construction or demolition of a “public work” as defined in 820 ILCS 130/2 for which the Director of Engineering has determined that the project will have a significant impact on one or more businesses or residential households that are adjacent or proximate to the project location, the specifications for the project shall require the Contractor to host, prior to mobilization, a meeting (which may be conducted by electronic means) with the neighboring properties at which the Contractor will introduce its project management team and its points of contact for the neighbors during the course of construction. Notice of the meeting shall be given by mail, signage and notice on the City website.

**ARTICLE V. PROCUREMENT OF CONSTRUCTION, ARCHITECT—, ENGINEER,
AND LAND SURVEYING SERVICES**

DIVISION 1. BID SECURITY AND PERFORMANCE BONDS

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SEC. 27-5100. BID SECURITY.

(a) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts. **Bid security may be required, in the sole discretion of the purchasing official, for construction contracts awarded by competitive sealed proposals or other methods.** Bid security shall be a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the City. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid.

(b) Rejection of Bids for Noncompliance with Bid Security Requirements. Noncompliance with bid security requirements shall require that the bid be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements.

(c) Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as set forth in Sec. 27-3100(g) (Competitive Sealed Bidding; Correction or Withdrawal of Bids; Cancellation of Awards), no action shall be had against the bidder or the bid security.

SEC. 27-5101. ALTERNATE PROCEDURES.

Nothing in this Article V shall prevent the City from following the provisions of the ~~Architectural, Engineering and Land Surveying Services Act~~ **Local Government Professional Services Selection Act** (50 ILCS 510/1 et seq.).

SEC. 27-5102. CONTRACT PERFORMANCE AND PAYMENT BONDS.

(a) When Required – Amounts. When a ~~construction~~ contract **for construction or other improvements to Public Works** is awarded in excess of ~~ten~~ **fifty** thousand dollars (~~\$150,000.00~~), the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract:

(1) A performance bond satisfactory to the City, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the City, in an amount equal to one hundred percent (100%) of the price specified in the contract;

(2) A payment bond satisfactory to the City, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and materials 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 one hundred percent (100%) of the price specified in the contract; and

(3) Nothing herein is intended to prohibit the requirement of a combined performance and labor and material payment bond in the amount of one hundred percent (100%) of the price specified in the contract.

(b) ~~Reduction of Bond Amounts. When a construction contract is awarded in an amount less than ten fifty thousand dollars (\$150,000.00), a combined performance and labor and material payment bond or escrow agreement in an amount equal to one thousand dollars (\$1,000.00) shall be required. Reserved.~~

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(c) Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of the City to require a performance bond or other security in addition to those bonds or in circumstances other than specified in subsection (a) of this section.

(d) Suits on Payment Bonds - Right to Institute. Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this section, and who has not been paid in full within ninety (90) days from the date on which that person performed the last of the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (90) days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

(e) Suits on Payment Bonds - Where and When Brought. Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.

SEC. 27-5103. COPIES OF BOND FORMS.

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.

DIVISION 2. ARCHITECT-, ENGINEER AND LAND SURVEYING SERVICES

SEC. 27-5200. PUBLIC ANNOUNCEMENT AND SELECTION PROCESS.

- (a) Public Announcement. Unless the City has a satisfactory relationship with one or more firms providing such services, it is the policy of the City to announce publicly all requirements for architect-, engineer ~~and or~~ land surveying services **when such services are expected to exceed \$40,000, which shall be increased annually by a percentage equal to the annual unadjusted percentage increase, if any, as determined by the Index as defined in Section 27-3200(e)(ii) [the “Architect, Engineer or Land Surveying Services RFQ Threshold”]. When such services are expected to exceed the Architect, Engineer or Land Surveying Services RFQ Threshold, the City shall** ~~and to~~ negotiate such contracts on the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of architect-, engineer and land surveying services **expected to exceed the Architect, Engineer or Land Surveying Services RFQ Threshold**, the appropriate purchasing official shall request firms to submit a statement of qualifications and performance data.
- (b) Selection Process. **An ad-hoc** selection committee composed of three members, including the director of public works **or Director of Utilities, Director of Engineering, and, if different, the director of the City department in need of the architect-, engineer or land**

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surveying services (if such director is either the director of public works or the director of engineering, then the third member shall be a person to be appointed by the city administrator), and the director of a City department in need of the architect-, engineer and land surveying services or land surveying services shall select no less than three (3) responding firms for interviews on the basis of evaluative criteria set forth in the request for qualifications ("RFQ") conduct discussions with no less than three (3) firms regarding the proposed contract and the relative utility of alternative methods of approach for furnishing the required services and shall select from among them no less than three (3) of the firms deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and detailed in the RFQ published by the selection committee. There will be no public opening and reading of responses received by the City pursuant to this request. Fees will not be a consideration in the selection process.

- (c) Negotiation. The ~~public works director~~ appropriate purchasing official shall negotiate a contract with the firm considered to be the most qualified for architect-, engineer or land surveying services at compensation which the ~~public works director~~ purchasing official determines in writing to be fair and reasonable to the City and within the project budget. In making this decision, the ~~public works director~~ purchasing official shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the ~~public works director~~ purchasing official be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the ~~public works director~~ purchasing official determines to be fair and reasonable to the City, negotiations with that firm shall be formally terminated. The ~~public works director~~ purchasing official shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the ~~public works director~~ purchasing official shall formally terminate negotiations. The ~~public works director~~ purchasing official shall then undertake negotiations with the third most qualified firm. Should the ~~public works director~~ purchasing official be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the selection committee shall select additional responding firms in order of their competence and qualifications, and the ~~public works director~~ purchasing official shall continue negotiations in accordance with this section until an agreement is reached. Contracts for architect-, engineer or land surveying services up to \$25,000 may be awarded by the Director of Utilities or Director of Engineering acting alone, while such contracts in amounts between \$25,001 and \$100,000 require the joint authorization of the director of engineering or director of utilities and the Finance Director or the City Administrator, and contracts for such services in excess of \$100,000 shall be awarded only by the City Council.

SEC. 27-5201. CONTRACTING FOR DESIGNATED PROFESSIONAL SERVICES.

- (a) Authority. For the purpose of procuring Designated Professional Services, the services of accountants, physicians, attorneys, and dentists, as defined by the laws of the state, any department or division requiring such services may procure them on its own behalf, in accordance with the selection procedures specified in the Moline Purchasing Code (Sec. 27-5201(b)) and pursuant to written policies adopted from time to time by the City Council. A department or division procuring such services shall consult with the appropriate purchasing official. No contract

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for the services of legal counsel may be awarded without the written consent and approval of the law director.

(b) Selection Procedure.

(1) Conditions for use. Except as provided under Sec. 27-3105 (Sole Source Procurement) or Sec. 27-3106 (Emergency Procurements), the **Designated Professional Services** designated in subsection (a) of this section shall be procured in accordance with this subsection.

(2) Statement of Qualifications. Persons engaged in providing the **Designated Professional Services** ~~types of professional services~~ may submit statements of qualifications and expressions of interest in providing such professional services. A department or division using such professional services may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement on an annual basis.

(3) Public Announcement and Form of Request for Proposals. Adequate notice of the need for such services shall be given by the department or division requiring the services through a request for proposals to those submitting an annual statement of qualifications and, unless at least three (3) persons have submitted an annual statement of qualifications and interest in a particular type of work, or, unless the city administrator makes a written determination that such procedure is impracticable in a particular circumstance, or, unless governed by the purchasing policy adopted pursuant hereto, in a newspaper of general circulation published in the City. The request for proposals shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.

(4) Discussions. The director of a department or division procuring the required professional services or a designee of such officer may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

(5) Award. Award **for contracts for Designated Professional Services up to \$25,000** shall be made to the offeror determined in writing by the director of the department or division procuring the required professional services or a designee of such officer to be best qualified based on the evaluation factors set forth in the request for proposals, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable. **For Designated Professional Services contracts between \$25,001 and \$100,000, such award shall be jointly made by the City Administrator and the Finance Director, and contracts for such services in excess of \$100,000 shall be awarded only by the City Council.**

ARTICLE VI. DEBARMENT OR SUSPENSION

SEC. 27-6100. AUTHORITY TO DEBAR OR SUSPEND.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the appropriate purchasing official, after consulting with the law director, is authorized to debar a person for cause from consideration or award of contracts. The debarment shall be for a period of not more than three years unless otherwise provided by law. After consultation with the

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law director, the appropriate purchasing official is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three (3) months. The causes for debarment include:

(1) 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;

(2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor;

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) Violation of contract provisions, as set forth below, of a character which is regarded by the appropriate purchasing official to be so serious as to justify debarment action:

a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that 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;

(5) Any other cause the appropriate purchasing official determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause; and

(6) For violation of the ethical standards set forth in 720 ILCS 5/33E-1 et seq.

SEC. 27-6101. DECISION TO DEBAR OR SUSPEND/NOTICE.

The appropriate purchasing official, after consultation with the law director, shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of such person's rights concerning judicial or administrative review. A copy of the decision required by this section shall be mailed or otherwise furnished immediately to the debarred or suspended person.

SEC. 27-6102. FINALITY OF DECISION.

A decision under Section 27-6101 (Decision to Debar or Suspend/Notice) shall be final and conclusive, unless fraudulent, or unless the debarred or suspended person within ten (10) days after receipt of the decision takes an appeal to the City Council. If unsatisfied after such an appeal, the debarred or suspended person may then commence a timely action in court in accordance with applicable law, but in no event after thirty-~~five~~ (3~~50~~) days has elapsed from the date of decision on appeal to the City Council.

ARTICLE VII. APPEALS AND REMEDIES

Council Bill/General Ordinance No. 3029-2023**SEC. 27-7100. BID PROTESTS.**

(a) Right to Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the city administrator. Protestors are urged to seek resolution of their complaints initially with the appropriate purchasing official. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within ten (10) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) Stay of Procurements During Protests. In the event of a timely protest under subsection (a) of this section, the appropriate purchasing official shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the city administrator makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the City.

(c) Entitlement to Costs. In addition to any other relief, when a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation, said protesting bidder or offeror shall receive only bid preparation costs other than attorney's fees; in no event shall attorney's fees be awarded hereunder.

ARTICLE VIII. COOPERATIVE PURCHASING**SEC. 27-8100. COOPERATIVE PURCHASING AUTHORIZED.**

The City may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more Public Procurement Units or External Procurement Activities in accordance with an agreement entered into between the participants **whenever such approach is deemed to be in the best interests of the City in accordance by the appropriate purchasing official and where funds for such a contract has been budgeted and appropriated by the City Council and where such contract is entered into pursuant to and in accordance with the Governmental Joint Purchasing Act, 30 ILCS 525/1, et seq. as now or hereinafter amended or its federal equivalent when authorized by the U.S. General Services Administration in accordance with its rules and regulations.** Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended State Public Procurement Unit contracts which are made available to Public Procurement Units. Such cooperative purchasing shall be conducted pursuant to Article VIII.

SEC. 27-8101. SALE, ACQUISITION, OR USE OF SUPPLIES BY A PUBLIC PROCUREMENT UNIT.

The City may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit ~~or~~ independent of the requirements of Article III (Source Selection and Contract Formation) of this Code. **Final approval of agreement or purchase order shall be only by the City Council or such person(s) as are vested with authority by this Chapter to bind the City to such contract based on the amount of the expenditure.**

SEC. 27-8102. COOPERATIVE USE OF SUPPLIES OR SERVICES.

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The City may enter into an agreement, independent of the requirements of this Code, with any other Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties, so long as approved by the City Council.

SEC. 27-8103. JOINT USE OF FACILITIES.

The City may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit under the terms agreed upon between the parties.

SEC. 27-8104. SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL SERVICES.

(a) Supply of Personnel. The city administrator is authorized, in the exercise of appropriate discretion, upon written request from another Public Procurement Unit, to provide personnel to the requesting Public Procurement Unit. The Public Procurement Unit making the request shall pay the Public Procurement Unit providing the personnel the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.

(b) Supply of Services. The informational, technical, and other services of any Public Procurement Unit may be made available to any other Public Procurement Unit upon the authorization of the city administrator, provided that the requirements of the Public Procurement Unit tendering the services shall have precedence over the requesting Public Procurement Unit. The requesting Public Procurement Unit shall pay for the expenses of the services so provided, in accordance with any agreement between the parties.

SEC. 27-8105. PUBLIC PROCUREMENT UNITS IN COMPLIANCE WITH CODE REQUIREMENTS.

Where the Public Procurement Unit administering a cooperative purchase complies with the requirements of this Code, any Public Procurement Unit participating in such a purchase shall be deemed to have complied with this Code. Public Procurement Units may not enter into a cooperative purchasing agreement for the purpose of circumventing this Code.

SEC. 27-8106. CONTRACT CONTROVERSIES.

Contract controversies arising under a cooperative purchasing agreement shall be resolved in the manner specified in the intergovernmental purchase agreement authorizing said purchasing or, if none is so specified, in accordance with the procedures set forth in this Code.”

Section 3 - All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed to the extent necessary to give effect to the provisions of this Ordinance.

Section 4 - This Ordinance and every provision thereof shall be considered severable. If any word, phrase, clause, sentence, paragraph, provision, section, or part of this Ordinance is found to be void, unconstitutional, or otherwise unenforceable, all remaining portions of this Ordinance not so declared void, unconstitutional, or unenforceable shall remain in full force and effect.

Section 5 - This Ordinance will be in full force and effect upon passage, approval and publication in pamphlet form in the manner provided by law.

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CITY OF MOLINE, ILLINOIS

DocuSigned by:
J. Kaypato

1A0D2384B96B...
Mayor

July 18, 2023
Date

Passed: July 18, 2023

Approved: July 25, 2023

Attest: *Jane A. N. P...*

1A0D2384B96B...
City Clerk