

DIVISION 4. - PURCHASING AND DISPOSITION OF GOODS AND SERVICES^[14]

Footnotes:

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Editor's note— Ord. No. 05-1062, adopted Dec. 5, 2005, amended Div. 4 in its entirety. Former Div. 4 pertained to similar subject matter and derived from Ord. No. 80-1, §§ 2—12, adopted July 1, 1980; Ord. No. 82-253, adopted Oct. 5, 1982; Ord. No. 89-439, adopted Jan. 17, 1989; Ord. No. 89-443, §§ 1—4, adopted Mar. 7, 2989; Ord. No. 90-487, adopted June 19, 1990; Ord. No. 02-916, adopted Nov. 6, 2002; and Ord. No. 03-938, adopted Jan. 21, 2003.

Sec. 2-566. - General provisions.

(a) *Purposes and policies.* The underlying purposes and policies of this division are:

- (1) To simplify, clarify, and modernize the city's procurement law.
- (2) To permit the continued enhancement of procurement procedures and practices.
- (3) To increase public confidence in public procurement.
- (4) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this city.
- (5) To foster effective broad-based competition within the free enterprise system.
- (6) To maintain a procurement system of quality and integrity.
- (7) To obtain the materials, services, and construction required by the city in a cost-effective and responsible manner.

(b) *Authorization for the use of electronic transmission.* The use of secure electronic media, including acceptance of signatures and electronic receipt of sealed bids and proposals, is authorized.

(c) All solicitation documents, at a minimum, must contain boilerplate language approved by corporation counsel.

(d) *Application.* This division applies to all procurement of supplies, services, and construction, whatever the source of the funds. This shall not, however, prevent any department or office from complying with lawful terms and conditions of any grant, gift, or bequest made to the city.

(Ord. No. 05-1062, 12-5-05; Amend. of 7-14-06; Ord. No. 11-1311, 2-7-11; Ord. No. 13-1378, 1-15-13; Ord. No. 22-1742, - - 22)

Sec. 2-567. - Procurement organization.

(a) *Procurement Officer.* The Procurement Officer shall serve as the central procurement office of the city and shall have the right to delegate authority as needed.

[NOTE: The terms "procurement officer" and "purchasing agent" may be used interchangeably in other sections of the Code.]

(b) *Duties.* The procurement officer, except as otherwise specifically provided in this code, shall:

1. Promulgate regulations, consistent with this code, governing the procurement, management, control, and disposal of any and all supplies.
2. Procure or supervise all procurements of the city.
3. Ensure proper inventory management.
4. Supervise the sale, trade, or other form of disposal of surplus items belonging to the city.
5. Ensure compliance with this code and implement regulations to review and monitor procurements conducted by any designee or department.

(c) *Centralized purchasing.* All rights, powers, duties, and authority relating to all procurements and the sale and disposal of supplies, hereby reside with the Procurement Officer except as otherwise provided in this section of the Code. All purchases and contracts for acquisition of equipment, supplies and services shall be made by the Procurement Officer pursuant to a requisition and specifications from the department whose appropriation will be charged.

(Ord. No. 05-1062, 12-5-05; Amend. of 7-14-06; Ord. No. 11-1311, 2-7-11; Ord. No. 22-1742, - - 22)

Sec. 2-568. - Methods of source selection.

(a) *Definitions.*

(1) *Competitive bids.* A method of acquiring supplies, services, or construction where the award is made to the lowest responsive and responsible bidder whose bid meets the bid specifications established by the city for the goods, services, or construction being sought that does not include discussions or negotiations with bidders. Except for competitive bids electronically submitted, competitive bids must be sealed.

(2) *Contract.* Any agreement entered into by the city with an individual or entity for the purchase of supplies, materials,

equipment, contractual services, or construction, including a purchase order, but not including a collective bargaining agreement.

(3) *Council threshold.* Procurements that are anticipated to exceed the current year threshold that is adjusted annually, with the beginning of the fiscal year, by the Consumer Price Index as determined by the state of Michigan for tax assessment, rounded up to the nearest hundred.

a. Purchases exceeding this threshold require city council approval regardless of method of procurement.

b. Council approval not required for: Merchandise for resale, parcel/postage services, utilities, railroad crossing maintenance, and revenue contracts.

c. Procurements shall not be artificially divided so as to avoid the council or quotation thresholds.

(4) *Business.*

(5) *Invitation to bid (ITB).* Formal request to prospective vendors soliciting price quotations or bids; contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.

(6) *Lowest responsible and responsive bidder.* In determining the lowest responsible and responsive bidder, in addition to price, the following factors shall be considered:

a. The ability, capacity, and skill of the bidder to perform the contract or provide the service or supplies required;

b. Whether or not the bidder can perform the contract or provide the service or supplies promptly or within the time specified, without delay or interference;

c. Whether the bid complies in all material respects with the bid specifications;

d. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

e. The quality of performance and time of completion by the bidder of previous contracts or services;

f. The previous and existing compliance by the bidder with laws and ordinances relating to similar contracts or services;

g. The sufficiency of the financial resources, equipment, and personnel resources and the ability of the bidder to satisfactorily perform the contract or provide the services or supplies;

h. The quality, availability, and adaptability of the supplies or services to the particular use required;

i. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

j. The number and scope of any additional, limiting, or qualifying conditions attached to the bid by the bidder; and

k. Whether the supplies are recyclable, biodegradable, or otherwise compatible with environmental concerns.

The failure of a bidder to promptly supply information in connection with an inquiry from the Procurement Officer or their designee with respect to any of the provisions enumerated herein may be grounds for a determination of nonresponsibility with respect to such bidder.

(7) *Non-responsive bidder.* Means a bid (ITB) or RFP response that does not confirm to the mandatory or essential requirements of the ITB or RFP.

(8) *Quotation threshold.* Procurements that are anticipated to exceed ten percent of the council threshold rounded to the nearest thousand.

(9) Request for quote (RFQ). Informal solicitation or request for information, where oral or written quotes are obtained from vendors, without formal advertising or receipt of "sealed" bids. Used only where ordinance does not require formal "sealed" bids and where it is anticipated that the procurement will not exceed the council threshold.

(10) Request for proposal (RFP). Bid solicitation method used for services that exceed the council threshold based on evaluation criteria set forth in the RFP. Used when it is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirements, or when other factors will be considered in the selection of the contractor/consultant in addition to price. Requires a sealed proposal.

(11) *Request for qualification.* A solicitation tool referred to as a statement of qualifications (SOQ) used to prequalify a pool of potential providers.

(12) *Responsive bidder.* Means a person or entity that has submitted a bid, which conforms in all respects to the requirements set forth in the ITB.

(13) *Sole source.* Means the only known vendor possessing the unique and singularly available capability based on technical qualifications, time constraints, or personnel expertise, to meet the requirements of the solicited bid or RFP.

(14) *Standardized services.* Standardized services are primarily price-driven selections compared to professional services that involve more than price for vendor selection.

(15) *Vendor.* Means any person or entity who offers goods for purchase or services for hire, and includes, but is not

limited to, contractors, subcontractors, and businesses.

(16) *Veteran*. Means an individual who meets both of the following:

a. As defined in MCL 35.61, is an individual who served in the United States Armed Forces, including the reserve components, and was discharged or released under conditions other than dishonorable. Includes an individual who died while on active duty in the United States Armed Forces.

b. Was released from their service with an honorable or general discharge.

(b) All city procurements shall be obtained and awarded through one of the following methods:

(1) *Sealed bidding*. Required method for invitation to bid (ITB) for the purchase of goods, equipment, standardized services, and construction for public use, except as specified herein, that is equal to or exceeds the council threshold. An award shall be made to the lowest responsible and responsive bidder unless Council determines that it is in the best interest of the city to award the contract to another bidder.

a. When the award is not given to the lowest responsible and responsive bidder, a full and complete statement of the reasons for awarding the contract elsewhere shall be prepared by the Procurement Officer and filed with the other documents relating to the bid.

(2) *Sealed proposal*. Required method for request for proposal (RFP) to acquire services that exceed the council threshold based on evaluation criteria set forth in the RFP. Generally accepted negotiation methodologies may be conducted with responsive and responsible proposers who submit proposals in the competitive range when defined in the RFP.

(3) *Quotes*. A solicitation for goods or services (referred to as a request for quote or RFQ) that is not anticipated to exceed the council threshold and which does not require a sealed submission. Shall be awarded to the lowest responsible and responsive bidder as determined by the Procurement Officer.

(4) *Best value quotes*. A solicitation for services based on the best overall value as determined by the Procurement Officer using the factors for lowest responsible and most responsive bidder.

(5) *Reverse auction*. An alternative method of obtaining goods in a real time electronic, competitive format.

(6) *Exceptions to competition*. Competitive bids shall not be required with respect to the following purchases unless otherwise required by law:

a. *Small purchases*. Procurements that are anticipated to be less than or equal to the quotation threshold.

b. *Sole source procurement*. It is demonstrated that only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications or proprietary needs. A cost-benefit analysis must be done to determine if sole source is the best course of action. Price and terms and conditions may be negotiated. The following services may be considered sole source procurements without a cost-benefit analysis unless the Procurement Officer deems otherwise: Professional entertainers, marketing for professional performances, parcel/postage services, utilities, and railroad crossing maintenance.

c. *Single source procurement*. Single source procurement occurs when an invitation to bid results in only one bid received. Single source procurement is to be treated as a sole source procurement.

d. *Used items*. In circumstances when used items are determined to be in the best interest to the city, the Procurement Officer is authorized to negotiate to obtain pricing and terms and conditions.

e. *Continuity of professional services*. An existing service is ongoing beyond the expiration of the contract and for uniformity of results or history of services it would be in the best interest of the city to extend the contract. It shall be demonstrated that the need for the contract extension could not have been anticipated at the time the original contract was awarded.

f. *Merchandise for resale*. Items obtained for the purpose of resale. Prices and terms and conditions may be negotiated.

g. *Emergency procurement*. With the mutual concurrence of the Procurement Officer and department director, a purchase may be made to alleviate a situation in which there is a threat to health, welfare, or safety, or to address an immediate regulatory mandate that does not allow time for normal, competitive purchasing procedures. This method may not follow required purchasing methods as previously described due to the immediate need. Regardless of the cost of the procurement, notice from the purchasing division will be provided to the mayor or council in advance of the procurement whenever possible. Procurements exceeding council threshold will be presented at the next regular council meeting.

h. *Change orders*. A written modification to a contract, approved by the Procurement Officer, in the form of a change order, which increases or decreases the contract cost, modifies the work to be performed, quantities ordered, or duration of the contract. Council approval shall be required when the new contract total value exceeds the council threshold and the change order or combination of change orders exceeds council threshold or 50 percent of the original contract amount, whichever is lower.

i. *Emergency change orders*. A verbal request for modification of a contract made by the mayor, a director of a department, or their designee, which increases the contract cost due to modification of the work to be performed. An emergency change order must be requested before the work is performed and shall be authorized by the Procurement

Officer only upon a showing that public life, health, property or peace may be affected. An emergency change order shall be followed by the written procedure outlined for change orders.

j. *Professional services*: Professional services means work rendered by an independent contractor who has a professed and documented knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including, but not limited to, accounting and auditing, court reporters, expert witnesses, legal, medical, engineering, actuarial, architecture, and research. The knowledge is founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills.

Professional services may be procured without formal competition upon a showing that professional offering the service has special or unique knowledge advantageous to the city, or is offering a service that depends primarily on the professional's invention, imagination or talent.

k. *Contracts with professional entertainers*

l. *Other*. At the request of the Procurement Officer, and with the approval of corporation counsel, the mayor and the council president, an alternative procurement method may be applied.

m. *Vehicles*. All vehicles shall be procured in accordance with the procedures established in this article. Upon purchase, all vehicles, except those purchased for use by the police department, shall be affixed with a city seal or other external identification identifying the vehicle as belonging to the city. The method of identification shall be determined by the mayor. The Procurement Officer shall execute all vehicle titles.

n. *Micro-purchase*. Procurements that are \$3,000.00 or less. Micro-purchases must be distributed among qualified suppliers but do not require soliciting competitive quotations.

(Ord. No. 05-1062, 12-5-05; Amend. of 7-14-06; Ord. No. 11-1311, 2-7-11; Ord. No. 13-1378, 1-15-13; Ord. No. 15-1476, 9-8-15; Ord. No. 22-1742, - -22)

Sec. 2-568A. - Preference for local bidders/Dearborn-based businesses.

(a) *Purpose*. The City of Dearborn believes that its purchasing practices should encourage local vendors to provide goods and/or services to the City of Dearborn, resulting in increased economic activity through more local jobs, tax revenues, and expenditures, and to entice businesses to relocate to the city.

(b) *Dearborn-based business*. Means a physical and economic relationship to Dearborn determined by a verifiable business address (not a P.O. Box) within the corporate boundaries of the City of Dearborn, activities carried out in Dearborn substantial enough to consider it a Dearborn-based business, and the payment of city personal property taxes for not less than one year immediately prior to the date of the bid submittal.

(c) *Exceptions*.

(1) Purchases resulting from exigent emergency conditions where any delay in completion or preference would jeopardize public health, safety or welfare of the citizens of the city, or where in judgment of the mayor or his designee, the operational effectiveness of a city department or division, or a significant city function, would be seriously threatened if a purchase was not made expeditiously.

(2) Purchases from any sole source supplier for supplies, materials or other equipment.

(3) Purchases made through the State of Michigan's extended purchasing program, or other cooperative purchasing contractual agreements utilized or initiated by the purchasing division.

(4) The procurement of goods and services utilizing the request for proposal (RFP) or best value quote processes where the award is based on criteria other than lowest cost, unless the original solicitation contains the criteria used to effect Dearborn-based preference.

(5) Bid solicitations that utilize federal funding that prohibits awards based on local preference criteria.

(6) Bid solicitations that utilize "life cycle cost" as the basis of award in place of submitted bid price.

(d) *Dearborn business preference*. When sealed bids are received under section 2-568, Dearborn-based businesses may be awarded a contract as the lowest responsible and responsive bidder, unless otherwise prohibited by law or contract, as follows:

(1) *For contract amounts up to \$100,000.000*. The person or business submitting the lowest responsible and responsive bid, according to the requirements of the bidding documents and this division, shall be deemed the best bid. If the lowest responsible and responsive bidder is not a Dearborn-based business, any Dearborn-based business with a bid within 10 percent of the lowest responsible and responsive bid shall be deemed the best bid if it meets all other qualifications found in the bid documents and this division for lowest responsible and responsive bidder other than bid price alone. A lowered bid by a Dearborn-based business which is premised upon, in whole or in part, changes to or variances to the bid specifications, contract requirements, or scope of work, shall be considered nonresponsible and will not be considered.

(2) No contract awarded pursuant to this section shall be sublet in any manner that permits 50 percent or more of the dollar value of the contract to be performed by a subcontractor or subcontractors who do not meet the definition of

"Dearborn-based."

(e) In no event shall a Dearborn-based business be awarded a contract if the business is not current on real and personal property taxes owed to the City of Dearborn.

(f) This section shall not waive or constrain, in any manner, the right and prerogative of the City of Dearborn to reject any and all bids or proposals, to reject a bid not accompanied by required bid security or other documentation or data required by the bidding documents, or to reject a bid which is in any way incomplete, irregular, not responsive or not responsible.

(g) *Veteran preference.* When sealed bids are received under section 2-568, veteran owned vendors may be awarded a contract as the lowest responsible and responsive bidder, unless otherwise prohibited by law or contract, as follows:

(1) The person or business submitting the lowest responsible and responsive bid, according to the requirements of the bidding documents and this division, shall be deemed the best bid. If the lowest responsible and responsive bidder is not a veteran owned vendor, any veteran owned vendor with a bid within 5 percent of the lowest responsible and responsive bid shall be deemed the best bid if it meets all other qualifications found in the bid documents and this division for lowest responsible and responsive bidder other than bid price alone. A lowered bid by a veteran owned vendor which is premised upon, in whole or in part, changes to or variances to the bid specifications, contract requirements, or scope of work, shall be considered non-responsible and will not be considered.

(2) No contract awarded pursuant to this section shall be sublet in any manner that permits 50 percent or more of the dollar value of the contract to be performed by a subcontractor or subcontractors who do not meet the definition of "veteran owned vendor."

(3) *Veteran owned vendor.* Means a vendor that is at least 51% owned and controlled by one or more persons that are veterans as defined in this division. In case of a publicly-owned vendor, at least 51% of the stock is controlled by one or more.

(Ord. No. 10-1266, 3-15-10; Ord. No. 11-1328, 6-6-11; Ord. No. 22-1742, - -22)

Sec. 2-568B. Diversity procurement.

(a) *Definitions.*

(1) *Minority owned vendor.* Means a vendor which is at least 51% owned by one or more minorities or, in the case of a publicly owned vendor, at least 51% of the stock is controlled by one or more minorities; and whose management and daily business operations are controlled by one or more individuals (minorities). A minority is a person who is a citizen or lawful resident of the United States who meets the classification of minority as determined by the U.S. Census Bureau (as of March 1, 2022) as follows:

i. *Black or African American.* A person having origins in any of the Black racial groups of Africa.

ii. *American Indian or Alaska Native.* A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

iii. *Asian.* A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Afghanistan, Pakistan, the Philippine Islands, Thailand, and Vietnam.

iv. *Native Hawaiian or Other Pacific Islander.* A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

v. *Middle East and North Africa.* A person having origins in any of the original peoples of the countries or territories that constitute the Middle East and North Africa, including, for example, Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, Yemen, Iran, Israel, the West Bank and Gaza.

vi. *Women owned vendor.* Means a vendor which is at least 51% owned and controlled by one or more women or, in case of a publicly-owned vendor, at least 51% of the stock is controlled by one or more women; and whose management and daily business operations are controlled by one or more such individuals.

vii. *Person with disability owned vendor.* Means a vendor that is at least 51% owned and controlled by one or more persons with a disability. In case of a publicly-owned vendor, at least 51% of the stock is controlled by one or more persons with a disability; and whose management and daily business operations are controlled by one or more such individuals. A person with a disability is one determined to be a service-disabled veteran or other person suffering from a chronic physical disability, defect or disease that restricts the type of employment and business opportunity for which the person would otherwise be qualified to perform.

viii. *Controlled.* Means exercising the power to make policy decisions.

(b) *Diversity certification.* The city will accept the following documentation as proof of minority, women or disabled person business ownership:

(1) Evidence from a third-party organization that evaluates diverse vendors including, but not limited to: the federal government, State of Michigan, Michigan Minority Business Development Council, Native American Business Owners,

Asian-Pacific Chamber of Commerce, and Michigan Hispanic Chamber of Commerce, Arab American Chamber of Commerce.

(2) Self-certification of minority ownership as evidenced by financial documentation and a notarized affidavit affirming that the ownership of the firm is at least 51% minority, women, or disabled person owned and that the owner participates in the day-to-day operation of the vendor. Falsification of information can result in the vendor's removal from the city's list of eligible vendors.

(c) *Diversity procurement objectives.* In an effort to ensure fair and equal competition for procurement opportunities and to increase the diversity of vendors to more closely reflect the diversity of its population:

(1) All contracts for goods and services will have diversity participation objectives as may be established from time to time by the administration.

(2) All purchases will be evaluated according to the established diversity participation objectives and a good faith effort shall be made to reach each of the objectives so established.

(3) The city will, whenever practical, solicit for all quotes or bids a minimum of three women-owned, minority-owned, and person with disability-owned business responses.

(Ord. No. 22-1742, - -22)

Sec. 2-569. - Cooperative purchasing.

(a) The Procurement Officer may 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 in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended public procurement unit contracts that are made available to other public procurement units (joint purchasing and piggybacking).

(b) All cooperative purchasing conducted under this article shall be consistent with the methods of section 2-568 (Methods of source selection).

(c) Procurement by participation in a cooperative purchasing agreement shall be exempt from the requirements of section 2-568A.

(Ord. No. 05-1062, 12-5-05; Amend. of 7-14-06; Ord. No. 11-1328, 6-6-11; Ord. No. 22-1742, - - 22)

Sec. 2-570. - Specifications.

Specifications shall be written to provide for and encourage full competition.

(a) The Procurement Officer may require bid deposits, performance and payment bonds as well as liability insurance as part of the procurement process. When such security is required, a certified cashier's check or bid bond will be held as a guaranty that respondent will enter into the contract in accordance with the terms and conditions of such advertisement and bid. Performance and payment bonds shall be delivered to the city and shall become binding upon execution of the contract.

(b) *Advertisement.* Invitations to bid, requests for proposals, auctions, and sale of real property must be advertised in one or any combination of the official newspaper of the city, trade magazines or publications, the internet, or other electronic means for a length of time to be determined by the Procurement Officer based on the particular transaction. Solicitations that result from the second step of a two-stage procurement process do not need to be advertised; however, the initial solicitation state (e.g., SOQ) must be advertised.

(Ord. No. 05-1062, 12-5-05; Amend. of 7-14-06; Ord. No. 11-1311, 2-7-11; Ord. No. 22-1742, - - 22)

Sec. 2-571. - Selection teams.

(a) *Invitation to bid.* This team shall review and approve the scope of work, specifications and special terms and conditions, and shall recommend the low responsible and responsive bid for award at a meeting of the city council. Teams shall consist of the Procurement Officer and the requesting department director or their designees. Other qualified persons may be designated to serve as additional members.

(b) *Request for proposal (RFP).* This team shall review and approve the scope of work, specifications and special terms and conditions as well as study the proposals submitted and, based on evaluation criteria, recommend to the mayor or city council the proposal with the best value to the city. Teams shall consist of the Procurement Officer and corporation counsel, or their designees, in an advisory capacity, and no less than three members with voting rights including the requesting department director or their designee and such other members as appointed by the mayor. Members may include persons not currently employed by the city but cannot be compensated if serving in a voting capacity.

(Ord. No. 05-1062, 12-5-05; Amend. of 7-14-06; Ord. No. 11-1311, 2-7-11; Ord. No. 22-1742, - - 22)

Sec. 2-572. - Conflict of interest.

All members of selection teams or in other decision-making processes must disclose any conflict of interest as stated in chapter 3, Standards of Conduct, of the City Charter. In addition, no person or entity, or anyone who has financial ties, direct

or indirect, to such a person or entity, who participates significantly in the development of specifications may compete.

(Ord. No. 05-1062, 12-5-05; Amend. of 7-14-06; Ord. No. 11-1311, 2-7-11; Ord. No. 22-1742, - - 22)

Sec. 2-573. - Evaluation and award.

(a) Each solicitation must set forth the criteria to be considered in the evaluation of bids or proposals for award and no factor shall be considered that is not included in the solicitation.

(b) The Procurement Officer, corporation counsel, finance director and the requesting department director or their designees shall approve all award letters and change orders prior to requesting city council approval.

(c) No contracts shall become operative until approved as to legality and form by corporation counsel.

(d) The mayor or his designee shall sign all contracts for purchases exceeding the council threshold.

(e) The procurement officer or their designee is authorized to sign contracts for purchases below the council threshold.

(f) Upon issuance of a purchase order, funds will be encumbered.

(Ord. No. 05-1062, 12-5-05; Amend. of 7-14-06; Ord. No. 11-1311, 2-7-11; Ord. No. 22-1742, - - 22)

Sec. 2-574. - Supply management.

The Procurement Officer is authorized to sell, trade in, lease, transfer or dispose of surplus by public auction, competitive solicitation, donation to nonprofit organizations or the scrapping of items when the cost of handling exceeds the estimated proceeds, or other method approved by council.

(Ord. No. 05-1062, 12-5-05; Amend. of 7-14-06; Ord. No. 08-1159, 4-21-08; Ord. No. 11-1311, 2-7-11; Ord. No. 22-1742, - - 22)

Sec. 2-575. - Contract management and contractual remedies; liquidation of damages.

(a) The Procurement Officer is authorized to:

- (1) Delegate the responsibility for contract administration, and
- (2) Establish regulations governing contract administration.

(b) Authority to debar or suspend:

(1) Suspension and debarment procedures are authorized when a contractor or vendor's activities, or those of any of its personnel or subsidiaries, are so egregious that the contractor or vendor should be precluded from obtaining government business for a period of time. Examples of these activities may include but are not limited to:

- a. Being in default to the city.
- b. Breaching a contract that is/was held with the city.
- c. Poorly performing under a contract that is/was held with the city.
- d. Engaging in criminal activity to obtain a contract.
- e. Conviction of embezzlement, theft or bribery, or
- f. Conviction of state or federal antitrust laws arising out of submission of bids or proposals.

(2) Suspension. The Procurement Officer, after consultation with the using department and corporation counsel, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding six months.

(3) *Debarment.* After reasonable notice, the Procurement Officer, after consultation with the using department and corporation counsel, shall have the authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than five years.

(4) *Decision.* The Procurement Officer or designee shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken. Notice of this decision shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(5) *Appeal.* The vendor may appeal this decision to the selection team. This decision shall be final and conclusive. Vendors shall be notified of the decision by letter.

(c) *Liquidated damages.* Contracts may include a liquidated damages clause to allow for recovery from the vendor, by setoff against the unpaid portion of the contract price, or otherwise pursuant to contract, a specified dollar amount per day, as liquidated damages and not as a penalty, for each day that the vendor shall fail to comply with the requirements of this division as determined by the Procurement Officer, in consultation with corporation counsel, said sum being fixed as negotiated and agreed upon by and between the vendor and the city because of the impracticable ability and extreme difficulty in fixing and ascertaining the actual damages which the city would sustain in the even of such a breach of contract;

and said amount is agreed to be the amount of damages which the city would sustain.

(Ord. No. 05-1062, 12-5-05; Amend. of 7-14-06; Ord. No. 11-1311, 2-7-11; Ord. No. 22-1742, - - 22)

Sec. 2-576. - Real property.

(a) Transactions involving the purchase, sale, gift or lease of real property shall be authorized by council resolution. Offers to purchase and proposals to sell city-owned property shall be reviewed by the corporation counsel and a recommendation made concerning:

- (1) The sufficiency of the consideration.
- (2) The public purpose involved in the land transaction.

(b) The following factors shall be considered and identified by the corporation counsel in making any recommendation to the city council for the purchase, sale or lease of real property:

(1) *Purchase:*

- a. Identification of the public purpose involved in the proposed land transaction.
- b. Determination of the market value of the property as indicated by the assessed and equalized values of the property from the city assessor's records.
- c. An opinion of value from the city assessor's office.
- d. Determination of value as reflected by any recent comparable sales in the immediate area.
- e. Obtaining an outside appraisal or opinion of value if recommended by the corporation counsel or requested by the city council.
- f. Transaction upon a negotiated purchase price or through condemnation, if authorized by separate council resolution.

(2) *Sale:*

- a. Identification of the public purpose involved in the proposed land transaction.
- b. Determination of the market value of the property as indicated by the assessed and equalized values of the property from the city assessor's records.
- c. An opinion of value from the city assessor's office.
- d. Advertising and/or posting the property if two or more persons have indicated an interest in the property or the property has general utility or the city council requests the property be advertised.
- e. Examining the use to which the property can or will be put and the cost of acquisition, demolition and improvement.
- f. Sale to the highest bidder. Consideration to include dollar offer and such other items as identified by the corporation counsel that represent a legal obligation to the city and value assigned thereto. The city shall reserve the right to reject all bids.

(3) *Lease:*

- a. Identification of the public purpose involved in the proposed land transaction.
- b. Determination of the market value of the property as indicated by the assessed and equalized values of the property from the city assessor's records.
- c. An opinion of value from the city assessor's office.
- d. As lessor, advertising and/or posting the property if two or more persons have indicated an interest in the property or the property has general utility or the city council requests that the property be advertised.
- e. As lessee, the lease fee should be based upon the above indicators of value through a negotiated lease fee procedure.

(c) These rules of procedure shall be construed liberally in recognition of the unique character of land transactions and the requirement that all real property transactions shall be authorized by council resolution. All land transactions involving city officers or employees shall be governed by applicable provisions of state law and city charter on conflicts of interest and, in any event, shall require a full disclosure of the officer or employee's interest and nonvoting of the officer involved.

(Ord. No. 05-1062, 12-5-05; Amend. of 7-14-06; Ord. No. 22-1742, - -22)

Secs. 2-577—2-595. - Reserved.