



City of Grand Island

Tuesday, July 27, 2021

Council Session

Item F-1

#9831 - Consideration of Approving Changes to Chapter 27 of the Grand Island City Code Relative to Procurement

Staff Contact: Stacy Nonhof, Interim City Attorney

Council Agenda Memo

From: Stacy R. Nonhof, Interim City Attorney
Meeting: July 27, 2021
Subject: Amend City Code Chapter 27 Purchasing
Presenter(s): Stacy R. Nonhof, Interim City Attorney

Background

Periodically it is a good idea to review City Code sections to make sure that they reflect the state of the law and purchasing power in today's world. The changes proposed to Chapter 27 regarding purchasing are the result of review by the City Attorney's Office and the Finance Department. Once a draft document was created, all department directors were given the chance to propose any changes or updates to Chapter 27.

Discussion

The purpose of this ordinance is to update Chapter 27 of Grand Island City Code and bring it into compliance with State Statute. Some of the major changes to Chapter 27 are:

- 27-4 – The bidder claiming confidential or proprietary information must provide an explanation of that claim when making the claim.
- 27-7 – It updates the minimum amount of a contract that requires Council approval to \$30,000.00 and is in compliance with the amount set in state purchasing statutes. This is the amount that counties across Nebraska are statutorily required to use.
- 27-8 – Competitive Sealed Bidding will now need to be advertised for 15 days instead of 7. This will be the same duration as Requests for Proposals and Qualifications.
- 27-11 – Small Purchases will now be allowed up to the amount of \$10,000.00 without a requirement for quotations. Currently, the amount for goods is \$2500.00 and the amount for work requiring labor is \$7500.00 – this change makes it a uniform amount across the board without the distinction of labor being involved or not. Quotes will be required for purchases between \$10,000 but equal to or less than \$30,000.00. Anything over \$30,000 will require a public letting that is approved by Council. Municipal electric utility enlargements or improvements will require three quotes between the amounts of \$10,000 and \$120,000. This amount is set by State Statute.

- Council Member Haase asked about the total number of purchases that this would affect or would have affected. With the help of the Finance Department, the total of number of purchases per month and at what level has been broken down as follows:

	<0	1-2499	2500-4999	5000-7499	7500-9999	10,000-19,999	20,000-29,999	Over 30,000	2500-9,999	Total Purchases	Affected Percentage Purchases
Jul-20	126	1918	83	54	27	42	24	58	164	2332	7.03%
Aug-20	139	1652	83	37	23	37	17	57	143	2045	6.99%
Sep-20	91	1670	82	47	22	47	24	57	151	2040	7.40%
Oct-20	99	1901	83	48	26	37	19	60	157	2273	6.91%
Nov-20	104	1636	65	27	16	25	18	45	108	1936	5.58%
Dec-20	66	1468	76	37	21	28	17	60	134	1773	7.56%
Jan-21	110	1688	73	54	30	55	20	67	157	2097	7.49%
Feb-21	58	1728	48	43	25	39	11	39	116	1991	5.83%
Mar-21	77	1694	63	37	16	38	37	46	116	2008	5.78%
Apr-21	82	1758	65	41	20	47	22	50	126	2085	6.04%
May-21	85	1610	72	31	13	33	12	42	116	1898	6.11%
Jun-21	80	1651	62	38	25	33	22	55	125	1966	6.36%
Jul-21	54	1029	45	29	14	21	8	52	88	1252	7.03%

- 27-12 – Sole Source Procurement is updated to only be a valid sole source for a period of ten years. After ten years, the department will be required to re-solicit bids and present another Sole Source designation to the Council. Currently, there is no limit as to how long a vendor can be a sole source provider for certain replacement items.
- 27-13 – Emergency Procurements has been updated to reflect the language of State Statute.
- 27-32 – Performance and Payment Bonds – the amount has been updated to reflect the amount triggering the requirement under State Statute to contracts in the amount of \$10,000 or more for the erecting, furnishing, or repairing of any public building, bridge, roadway, or other public structure or improvement.
- 27-34 – Fiscal Responsibility has been changed to reflect a more realistic number requiring prior Council approval for a contract modification, change order, or contract price adjustment from \$300 to an amount of five percent or more than the original contract amount. Anything over 5% of the contract amount will require Council approval prior to the work being done. Any change orders under that amount can be authorized upon the recommendation of the engineer and approval of the department director. Those change orders will then be approved by Council at a later date. This will prevent delays in projects where changes are needed. Currently, any change over \$300 needs Council approval prior to the work being done. Many of these changes are time sensitive and a delay will ultimately cost more than the proposed change as the delay in the project costs the City time and extra money paid to the contractor for delays that can be prevented.

- 27-62 Business Travel has been removed to make a requirement for a travel policy manual that will be subject to approval by the Finance Director and City Administrator. All travel will be in compliance with that manual.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends approval of the changes to Chapter 27 of City Code.

Sample Motion

Move to approve Ordinance No. 9831.

ORDINANCE NO. 9831

An ordinance to amend Chapter 27 of Grand Island City Code; to amend Sections 27-3 thru 27-5, 27-7 thru 27-13, 27-32, 27-34, 27-35, and 27-60 thru 27-64; to clarify and/or make general corrections to various code sections, to repeal any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. Sections 27-3 thru 27-5, 27-7 thru 27-13, 27-32, 27-34, 27-35, and 27-60 thru 27-64 of the Grand Island City Code is hereby amended to read as follows:

§27-3. Definitions

Architect, Engineer and Land Surveying Services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State of Nebraska.

Blind Trust. An independently managed trust in which the employee-beneficiary has no management rights and in which the employee beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

Brand Name or Equal Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet City requirements, and which provides for the submission of equivalent products.

Brand Name Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers.

Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Change Order. ~~A written order signed and issued by the purchasing agent, directing the contractor to make changes which the "Changes" clause of the contract authorizes the purchasing agent to order without the consent of the contractor.~~ Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contract Modification (bilateral change). ~~Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.~~ A written order signed and issued by the purchasing agent, directing the contractor to make changes which the "Changes" clause of the contract authorizes the purchasing agent to order without the consent of the contractor.

Approved as to Form [□] _____ July 23, 2021 □ City Attorney
--

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.

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.

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

Contractor. Any person having a contract with the City or a using agency thereof.

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.

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

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 the provisions of this chapter, and a fee or profit, if any.

Direct or Indirect Participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

Disadvantaged Business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

Employee. An individual drawing a salary or wages from the City, whether elected or not; any noncompensated individual performing personal services for the City, or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the City; and any noncompensated individual serving as an elected official of the City.

Financial Interest. (a) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$100 per year, or its equivalent; (b) ownership of 1% of any property or business; or (c) holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

Gratuity. A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate Family. A spouse, children, parents, brothers, and sisters.

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

Person. Any business, individual, union, committee, club, other organization, or group of individuals.

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.

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.

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.

Public Agency. A public entity subject to or created by the City.

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.

Request for Proposals. A document, whether attached or incorporated by reference, utilized for soliciting proposals.

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.

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.

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. The term shall not include employment agreements or collective bargaining agreements.

Small Business. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

Specification. Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of a requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

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.

Using Agency. Any department, commission, board, or public agency requiring supplies, services, or construction procured pursuant to this chapter.

§27-4. Public Access To Information

Procurement information shall be a public record to the extent provided in Neb. R.R.S. §84-712 to §84-712.09, as amended, and shall be available to the public as provided in such statutes. Any material marked as confidential, proprietary and/or as a trade secret will only be withheld pursuant to these statutes if the bidder includes an explanation of why this information should be withheld.

§27-5. Purchasing Agent

~~There is hereby created an Office of the Purchasing Agent, headed by the Chief Purchasing Agent. The Chief Purchasing Agent shall be a person with demonstrated executive and organizational ability with knowledge of public procurement law and contracts.~~

The City Attorney, or their designee, shall perform the duties of Purchasing Agent ~~during any period that such office shall be vacant.~~ The Purchasing Agent may establish rules and procedures regarding purchases, purchase orders and use of City credit cards.

§27-7. Delegation To Other Officials

With the approval of the City Council and the Mayor, the Purchasing Agent may delegate authority to purchase certain supplies, services, or construction items to other City officials, if such delegation is deemed necessary for the effective procurement of those items. Procurement authority with respect to certain supplies, services, or construction may be delegated to other City officials by the Mayor with the approval of the City Council, when such delegation is deemed necessary for the effective procurement of these supplies, services, or construction. Procurement authority with respect to purchases of materials, supplies, equipment, services and professional services under §27-11 is delegated to the department directors. City Council approval shall be required for all contracts for the purchase of materials, supplies, equipment, services and professional services of more than \$30,000.00.

§27-8. Competitive Sealed Bidding

Conditions for Use. ~~All contracts of the City shall be awarded by competitive sealed bidding.~~ Except as otherwise provided in §27-9 (Competitive Sealed Proposals), §27-10 (Designated Professional Services), §27-11 (Small Purchases), §27-12 (Sole Source Procurement), §27-13 (Emergency Procurements), and §27-35 (Architects, Engineers, Surveyors) of this chapter, all contracts of the City shall be awarded by competitive sealed bidding.

Invitation for Bids. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement. Invitations for bids on public works contracts shall require a statement of compliance with fair labor standards as required by Neb. R.R.S. 73-102.

Public Notice. ~~Adequate~~ Public notice of the invitation for bids shall be given a ~~reasonable time~~, not less than ~~seven (7)~~ fifteen (15) calendar days prior to the date set forth therein for the opening of bids. Such notice must be posted on the City's website under the Business tab, specifically the bids and request for proposals sections. Such notice ~~may~~ shall also include publication in a newspaper of general circulation a ~~reasonable time~~ no less than fifteen (15) calendar days prior to bid opening. The public notice shall state the place, date, and time of bid opening.

Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the purchasing agent deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection in accordance with §27-4 (Public Access to Information).

Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the

requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

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 where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or telegraphic 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. 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 be permitted to withdraw its bid if:

- (A) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- (B) 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 purchasing agent.

Award. 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, subject to the requirements of Neb. R.R.S. 73-101.01 for resident bidder preference. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the city treasurer, and such bid does not exceed such funds by more than five percent, the purchasing agent is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Negotiated adjustments shall be based upon eliminating independent deductive items specified in the invitation for bids or upon adjustments to unit prices or project prices.

~~—— 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.~~

Local Bidder Preference. In case of tied low bids, all other things being equal, preference shall be given in the following order:

- (A) To those bidders who manufacture their products within the limits of the City of Grand Island;
- (B) To those bidders who manufacture their products within the limits of the County of Hall;

- (C) To those bidders who package, process, or through some other substantial operation have employees and facilities for these purposes in the City of Grand Island;
- (D) To those bidders who package, process, or through some other substantial operation have employees and facilities for these purposes in the County of Hall;
- (E) To those bidders who maintain a bona fide business office in the City of Grand Island, whose products may be made outside the confines of the County of Hall;
- (F) To those bidders who maintain a bona fide business office in the County of Hall, whose products may be made outside of the confines of the County of Hall;
- (G) To those bidders whose commodities are manufactured, mined, produced, or grown within the State of Nebraska, and to all firms, corporations, or individuals doing business as Nebraska firms, corporations, or individuals when quality is equal or better and delivered price is the same or less than the other bids received;
- (H) To those bidders whose commodities are manufactured, mined, produced, or grown within the United States of America, and to all firms, corporations, or individuals doing business as firms registered in states other than Nebraska, when quality is equal or better and delivered price is the same or less than the other bids received.

§27-9. Competitive Sealed Proposals

Conditions for Use. When the purchasing agent 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 proposals method.

Request for Proposals. Proposals shall be solicited through a request for proposals.

Public Notice. ~~Adequate~~ Public notice of the request for proposals shall be given in the same manner as provided in §27-8 (Competitive Sealed Bidding); ~~provided, the minimum time shall be fifteen (15) calendar days.~~

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 during the process of negotiation including meetings and interviews with any of the offerors. The register of proposals containing the name and address of the offerors shall be open for public inspection. All proposals shall be open for public inspection after the award of the contract.

Evaluation Factors. The request for proposals shall state the relative importance of price and other evaluation factors.

Discussion with Responsible Offerors and Revisions to Proposals. As provided in the request for proposals, 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 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.

Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

§27-10. Designated Professional Services

Authority. For the purpose of procuring the services of accountants, ~~elergy~~, physicians, lawyers, or dentists, as defined by the laws of the State of Nebraska, any using agency requiring such services may procure them on its own behalf, in accordance with the selection procedures specified in this section. A using agency procuring such services shall consult with the purchasing agent. ~~No contract for the services of legal counsel may be awarded without the approval of the city council.~~

Selection Procedure:

(A) *Conditions for Use.* Except as provided under §27-12 (Sole Source Procurement) or §27-13 (Emergency Procurements), the professional services designated in this section shall be procured in accordance with this section.

(B) *Statement of Qualifications.* Persons engaged in providing the designated types of professional services may submit statements of qualifications and expressions of interest in providing such professional services. A using agency 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.

(C) *Public Announcement and Form of Request for Proposals.* Adequate public notice of the need for such services shall be given by the using agency requiring the services through a request for proposals. Public notice of the request for proposals shall be given in the same manner as provided in §27-8 (Competitive Sealed Bidding). ~~Such notice may include publication in a newspaper of general circulation not less than seven (7) days prior to the final date for receipt of proposals.~~ 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.

(D) *Discussions.* The head of a using agency 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.

(E) *Award.* Award shall be made to the offeror determined in writing by the head of the using agency 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.

§27-11. Small Purchases

General. The Purchasing Agent shall adopt operational procedures for making small purchases of materials, supplies, equipment, services or labor in the amount of \$10,000 or less. Such operational procedures shall provide for obtaining adequate and reasonable competition for the supply, service, or construction being purchased. Purchases shall not be artificially divided so as to constitute a purchase by quotation or general purchase under this section.

ORDINANCE NO. 9831 (Cont.)

~~*General.* Any contract not exceeding \$20,000, or in the case of utility power plant fuel contracts, any contract not exceeding \$40,000, or for the purchase of equipment used for such enlargement or improvement of the electric system, any contract not exceeding \$40,000, may be made in accordance with the purchase by quotation and small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a purchase by quotation or a small purchase under this section.~~

~~*Public Works General Improvement Projects.* In any contract not exceeding \$20,000 for enlargement or general improvements, such as water extensions, sewers, public heating systems, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, no less than three businesses shall be solicited to submit quotations. Award shall be made to the business offering the lowest acceptable quotation. The names of businesses submitting quotations, and the date and amount of each quotation shall be recorded and maintained as a public record.~~

~~*Utility Power Plant Fuel Contracts.* In all purchases of utility power plant fuel not exceeding \$40,000 per contract, no less than three businesses shall be solicited to submit quotations. Award shall be made to the business offering the lowest acceptable quotation. The names of businesses submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record.~~

~~*Municipal Electric Utility Enlargement or Improvement.* In any contract by the municipal electric utility for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement, when said contract does not exceed \$40,000, no less than three businesses shall be solicited to submit quotations. Award shall be made to the business offering the lowest acceptable quotation. The names of businesses submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record.~~

~~*Purchases by Quotation.* Insofar as it is practical for materials, supplies, equipment and services or labor purchases in excess of \$2,500 10,000 but equal to or less than \$30,000, and services and services/materials purchases in excess of \$7,500 10,000, no less than three (3) businesses shall be solicited to submit quotations. For contracts by the municipal electric utility for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement, the amount for three (3) quotes shall be between \$10,000 and \$120,000. Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record. Purchase requirements shall not be artificially divided so as to constitute a purchase by quotation or general purchase under this section.~~

~~*Small Purchases.* The purchasing agent shall adopt operational procedures for making small purchases of materials, supplies and equipment, in an amount of \$2,500 or less, and for making purchases of services and labor, including materials in an amount of \$7,500 10,000 or less. Such operational procedures shall provide for obtaining adequate and reasonable competition for the supply, service, or construction being purchased. Further, such operational procedures shall require the preparation and maintenance of written records adequate to document the competition obtained, properly account for the funds expended, and facilitate an audit of the small purchase made.~~

§27-12. Sole Source Procurement

A contract may be awarded without competition when after advertising for bids the city council determines that there is only one source for the required supply, service, or construction. The purchasing agent 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 items procured under each contract, and the identification number of each contract file. Such sole source designation shall only be valid for ten (10) years. After ten (10) years, the using department shall resolicit bids for said item(s).

§27-13. Emergency Procurements

Notwithstanding any of the provisions of this chapter, the city council may as authorized by State Statutes make or authorize the Purchasing Agent or others to make emergency procurements of supplies, services, or construction when there exists a threat from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to life, public health, welfare, or safety, endangering property, or cause disruption of public utility services; 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 included in the contract file. ~~As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the items procured under the contract, and the identification number of the contract file.~~ A copy of the contract and department justification of the emergency shall be provided to the Purchasing Agent within three (3) business days after the contract approval. A copy of the justification shall be kept with the contract in the contract file.

§27-32. Performance And Payment Bonds

When Required; Amounts. When a ~~construction~~ contract is awarded in excess of \$2510,000, for the erecting, furnishing, or repairing of any public building, bridge, roadway, or other public structure or improvement, the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract:

- (A) A performance bond satisfactory to the City, executed by a surety company authorized to do business in the State of Nebraska or otherwise secured in a manner satisfactory to the City, in an amount equal to 100% of the price specified in the contract; and
- (B) A payment bond satisfactory to the City, executed by a surety company authorized to do business in the State of Nebraska or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

Reduction of Bond Amounts. After ten (10) days written notice to the Mayor and City Council, the purchasing agent is authorized to reduce the amount of performance and payment bonds to 50% of the contract price for each bond when a written determination is made that it is in the best interests of the City to do so.

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 this section.

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 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 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.

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.

§27-34. Fiscal Responsibility

Every contract modification, change order, or contract price adjustment ~~under a construction contract with the City in excess of \$300~~ in an amount less than five percent (5%) of the original contract amount may be approved by the department director and Purchasing Agent. Every contract modification, change order, or contract price adjustment in an amount of five percent (5%) or more than the original contract amount is shall be subject to prior written certification by the head of the department responsible for the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, the purchasing agent shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds have been appropriated therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this section.

Notwithstanding the above, every contract modification, change order, or contract price adjustment in excess of \$10,000 more than 5% of the contract price shall require prior approval of the City Council unless the delay necessitated by such prior approval would: endanger public health, welfare, or safety; endanger property; cause or prolong disruption of public utility

service, or result in increased costs to the City. If prior council approval is not obtained, such approval shall be requested within thirty (30) days of approval by the department director.

§27-35. Architects; Engineers; Surveyors

Public Announcement. It is the policy of the City to announce publicly all requirements for architects, engineers, and land surveying services 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, the purchasing agent shall request firms to submit a statement of qualifications and performance data.

Selection Process. A selection committee shall be appointed by the director of the department requesting such services. ~~composed of the purchasing agent, the director of public works and the head of a using agency in need of the architect, engineer, or land surveying services~~ The selection committee shall conduct discussions with no less than three 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 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 published by the selection committee.

Negotiation. The purchasing agent shall negotiate a contract with the firm considered to be the most qualified for architect, engineer, or land surveying services at compensation which the purchasing agent determines in writing to be fair and reasonable to the City. In making this decision, the purchasing agent shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the purchasing agent be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the purchasing agent determines to be fair and reasonable to the City, negotiations with that firm shall be formally terminated. The purchasing agent shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the purchasing agent shall formally terminate negotiations. The purchasing agent shall then undertake negotiations with the third most qualified firm. Should the purchasing agent be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the selection committee shall select additional firms in order of their competence and qualifications, and the purchasing agent shall continue negotiations in accordance with this section until an agreement is reached.

§27-60. Authorized Expenditures

The mayor and city council shall be authorized to approve the expenditure of funds in accordance with the Local Government Miscellaneous Expenditure Act, subject to the following:

(A) Authorized expenses may include:

- (i) Registration costs, tuition costs, fees, or charges;
- (ii) Mileage at the then current rate allowed by Neb. R.R.S. §81-1176, or actual travel expense if travel is by commercial or charter means. When travel mode is optional, the lower of the reimbursable cost is authorized; and
- (iii) Meals and incidental (M&I) expense at the then current rate of the applicable federal (GSA) per diem for M&I when searching for the specific Primary Destination; and
- (iv) When travel is a partial day as defined in the City's Travel Policy Manual, the federal per diem rate for meals will apply at the rate of 20% for breakfast, 30% for lunch and 50%

for supper. Departures must occur prior to 6:00 a.m. for breakfast and return must be after 8:00 p.m. for supper; and

(v) Lodging at a rate not exceeding the then current applicable federal per diem rate unless lodging is at a location hosting the function in which case the actual lodging rate is allowed but no additional transportation costs shall be paid for commuting during the lodging stay.

(B) Authorized expenditures shall not include expenditures for meals of city council members provided while attending a public meeting of the city council unless such meeting is a joint meeting with one or more other governing bodies.

(C) Authorized expenditures shall not include expenditures for any expenses incurred by a spouse of an elected or appointed official, employee, or volunteer unless the spouse is also an elected or appointed official, employee, or volunteer of the City.

§27-61. Beverages; Service Recognition

The expenditure of public funds is hereby authorized for the following purposes:

(A) Nonalcoholic beverages provided to individuals attending public meetings of the city council.

(B) Nonalcoholic beverages and meals:

(i) Provided for any individuals while performing or immediately after performing relief, assistance, or support activities in emergency situations, including but not limited to, tornado, severe storm, fire or accident;

(ii) Provided for any volunteers during or immediately following their participation in any activity approved by the city council, including but not limited to, mowing parks, picking up litter, removing graffiti, or snow removal;

(iii) Provided at one recognition dinner each year held for elected and appointed officials, employees, or volunteers. The maximum cost per person for such dinner shall be nineteen dollars (\$19.00). The annual recognition dinner may be held separately for employees of each department or separately for volunteers, or any of them in combination.

(C) Upon retirement, plaques, certificates of achievement, or items of value (does not include gift cards) may be awarded to elected or appointed officials, employees, or volunteers, including persons serving on local government boards or commissions, subject to the following dollar limit on value:

Volunteer Service	\$ <u>50.00</u>			
Board, Commission, Council Service	\$100.00			
Award Ceremony/Farewell Tribute Party	\$ <u>150.00</u>			
1 year employment	0.00	plus	service	pin
5 years employment	0.00	plus	service	pin/clip
10 years employment	50.00	plus	service	pin
15 years employment	75.00	plus	service	pin
20 years employment	100.00	plus	service	pin
25 years employment	125.00	plus	service	pin
30 years employment	150.00			
35 or more years employment	175.00			

§27-62. Business Travel

The following procedures shall be used for business travel:

(A) Transportation Method

- I. When travel is by air, advance ticketing by purchase order will be utilized whenever possible to obtain the lowest available coach fare.
- II. All refunds, travel coupons, and other promotions in connection with business travel shall be returned to the City.
- III. When ground travel is required, City vehicles shall be used whenever possible.

(B) Lodging

- I. Reimbursement for non-commercial lodging is not permitted.
- II. When personnel are accompanied by non-City personnel, only the costs attributed to the City personnel are reimbursable.

(C) Expenses

- I. The following expenses are reimbursable upon affidavit of expenditure and receipts are not required: parking fees; taxi and bus fares; and highway tolls.
- II. The following expenses are reimbursable upon submission of paid receipts:
 - (a) registration, tuition, and fees for official functions related to the travel;
 - (b) supplies or equipment required for travel or training;
 - (c) rental cars; and
 - (d) traveler's checks fees.
- III. The following expenses are not reimbursable:
 - (a) entertainment, including television rentals;
 - (b) personal expenses, e.g. hygiene items, magazines;
 - (c) travel insurance; and
 - (d) alcoholic beverages.

(D) Travel Advances. Travel advances are not authorized, except under special circumstances with written prior approval of the finance director. The use of credit cards and advance purchase order payment of lodging and transportation expenses are encouraged.

(E) Expense Claims. Personnel on authorized travel must submit expense claims to the Finance Department immediately upon return, but not later than four (4) work days after return to duty. All receipts, unexpended City funds and funds due the City, shall be returned at that time. All expenses (including prepaid expenses) shall be summarized and accounted for.

Travel for business shall be in accordance with the Travel Policy Manual as approved by the City Administrator and Finance Director.

§27-63. Nebraska State Contract List

City departments are not required to advertise for bids nor request quotes when purchasing items from the Nebraska State Contract list, as developed by the Nebraska Department of Administrative Services Materials Division, as all statutory bidding requirements have been met in approving this list.

§27-64. Cooperative Purchasing Agreements

City departments will be allowed to use local, state, national Cooperative Purchasing Agreements, or cooperative purchase agreements with governmental entities whose procurement policies and procedures meet or exceed those applicable to the City.

ORDINANCE NO. 9831 (Cont.)

The Chief Purchasing Agent shall review all agreements to determine that they meet statutory bidding requirements ~~before approval by the City Council.~~

~~The City Council shall approve all said agreements prior to use.~~

Use of approved Cooperative Purchasing will preclude the requirement of advertising for bids or solicitation of quotes.

SECTION 2. Any ordinance or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 3. This ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: _____.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk