



City of Grand Island

Tuesday, February 21, 2012

Study Session

Item -3

Presentation of Procurement Policy

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Procurement Code

- **Purpose** -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
- **Application** - procurement of supplies, services, and construction by the City

Small Purchases

- Small purchases are less than \$20K and \$40k for electric system improvements.
- Small purchases for materials over \$2,500 and for labor over \$7,500 must be accompanied by 3 quotes from potential vendors

Sole Source

- 🇺🇸 A contract may be awarded without competition if after advertising there is only one source that responds with a bid.

Emergency Procurements

- Authorized individuals may make emergency procurements of supplies, services, or construction when there exists a threat to public health, welfare, or safety

Competition


- All specifications shall promote overall economy and encourage competition in satisfying the City's needs, and shall not be unduly restrictive.
- Unless the purchasing agent determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required

Debarring

- Authority To Debar
- Decision To Debar
- Finality Of Decision

Bid Protests

 *Right to Protest*

 *Stay of Procurements During Protests*

Employee Conflict Of Interest

- City employees may not participate directly or indirectly in a procurement contract when the City employee knows there is a conflict

CHAPTER 27

PROCUREMENT

Article I. General Provisions

§27-1. 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.

§27-2. Application

This chapter applies to contracts for the procurement of supplies, services, and construction, entered into by the City after August 1, 1991, 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 a public agency for public purchasing, irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

§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.

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.

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.

§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 shall perform the duties of purchasing agent during any period that such office shall be vacant.

§27-6. Reserved

§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.

Amended by Ordinance No. 9298, effective 07-05-2011

§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.

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) calendar days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation a reasonable time 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.

Amended by Ordinance No. 8961, effective 3-9-2005

§27-10. Designated Professional Services

Authority. For the purpose of procuring the services of accountants, clergy, physicians, lawyers, 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. 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. 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 and equipment purchases in excess of \$2,500, and services and services/materials purchases in excess of \$7,500, 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 the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.

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 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.

§27-13. Emergency Procurements

Notwithstanding any of the provisions of this chapter, the city council may as authorized by State Statutes make or authorize others to make emergency procurements of supplies, services, or construction when there exists a threat to public health, welfare, or safety; 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.

§27-14. Cancellation Of Requests

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, when it is for good cause and 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 when it is for good cause and in the best interests of the City. Notice of cancellation shall be sent to all businesses solicited. 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 resolicitation or any future procurements of a similar nature. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

§27-15. Responsibility Of Bidders

Determination of Nonresponsibility. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the purchasing agent. The failure of a bidder or offeror to supply promptly information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

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 purchasing agent, or using agency, without prior written consent by the bidder or offeror.

§27-16. Cost Or Pricing Data

Required Submission Relating to the Award of Contracts. A prospective contractor shall submit cost and/or pricing data when the contract is expected to exceed \$100,000 and is to be awarded by competitive sealed proposals (§27-9, Competitive Sealed Proposals), or by sole source procurement authority (§27-12, Sole Source Procurement).

Exceptions. The submission of cost or pricing data relating to the award of a contract is not required when:

- (A) The contract price is based on adequate price competition;
- (B) The contract price is based on established catalogue prices or market prices;
- (C) The contract price is set by law or regulation; or
- (D) It is determined in writing by the purchasing agent that the requirements of this section may be waived, and the determination states the reasons for such waiver.

Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost and/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 \$100,000.

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

- (A) Unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
- (B) It is determined in writing by the purchasing agent that the requirements of this section may be waived, and the determination states the reasons for such waiver.

Certification Required. A contractor, actual or prospective, required to submit cost and/or pricing data in accordance with this section, 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.

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.

§27-17. Cost Or Price Analysis

A cost analysis or a price analysis, as appropriate, may be conducted by the Purchasing Agent and using department prior to award of the contract other than one awarded under §27-8 (Competitive Sealed Bidding). A written record of such cost analysis or price analysis shall be made a part of the contract file.

§27-18. Bid And Performance Bonds

Bid, payment, and performance bonds or other security may be requested for supply, service or construction contracts as the Purchasing Agent or head of a using department deems advisable to protect the City's interests, or required by law. Any such bonding requirements shall be set forth in the solicitation. Bid, payment, or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

§27-19. Types Of Contracts

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, 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.

Multi-Term Contracts.

(A) *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 and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations, for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(B) *Determination Prior to Use.* Prior to the utilization of a multi-term contract, it shall be determined in writing:

- (i) That estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- (ii) That such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economics in City procurement.

(C) *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. The cost of cancellation may be paid from any appropriations available for such purposes.

Multiple Source Contracting.

(A) *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).

(B) *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 §27-8 (Competitive Sealed Bidding), §27-9 (Competitive Sealed Proposals), §27-11 (Small Purchases), and §27-13 (Emergency Procurements), 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.

(C) *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:

(i) 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

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

(D) *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.

(E) *Determination Required.* The purchasing agent shall make a written determination setting forth the reason for a multiple source award, which shall be made a part of the procurement file.

§27-20. Contract Clauses

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 purchasing agent may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:

- (A) The unilateral right of the City to order in writing changes in the work within the scope of the contract;
- (B) 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;
- (C) Variations occurring between estimated quantities of work in contract and actual quantities;
- (D) Defective pricing;
- (E) Liquidated damages;
- (F) Specified excuses for delay or nonperformance;
- (G) Termination of the contract for default;
- (H) Termination of the contract in whole or in part for the convenience of the City;
- (I) Suspension of work on a construction project ordered by the City; and
- (J) 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:

I. When the contract is negotiated;

II. When the contractor provides the site or design; or

III. When the parties have otherwise agreed with respect to the risk of differing site conditions.

Price Adjustments.

(A) 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:

I. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

II. By unit prices specified in the contract or subsequently agreed upon;

III. 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;

IV. In such other manner as the contracting parties may mutually agree; or

V. 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 as computed by the City or as accounted for with reference to cost principles and subject to the provisions of §27-40 (Contract Claims).

(B) A contractor shall be required to submit cost and/or pricing data if any adjustment in contract price is subject to the provisions of §27-16 (Cost or Pricing Data).

Standard Clauses and Their Modification. The purchasing agent may establish standard contract clauses for use in City contracts. Any standard 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. Contracts for public works shall include a provision for the maintenance of fair labor standards as required in Neb. R.R.S. 73-102.

§27-21. 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 established and maintained.

§27-22. Accounting System

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the purchasing agent that:

(A) The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(B) The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

§27-23. Right To Inspect Plant

The City may, at reasonable times, inspect the part of the plant, place of business, or worksite 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.

§27-24. Right To Audit Records

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 §27-16 (Cost or Pricing Data) to the extent that 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.

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 years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

§27-25. Anticompetitive Practices

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General and the Hall County Attorney.

§27-26. City Procurement Records

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 purchasing agent.

Retention of Procurement Records. All procurement records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules consistent with applicable state and federal law.

§27-27. Specifications; Competition

All specifications shall be drafted so as to promote overall economy for the purpose intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including but not limited to, those prepared for the City by architects, engineers, designers, and draftsmen.

§27-28. Specifications; Brand Name Or Equal

Use. Brand name or equal specifications may be used when the purchasing agent determines in writing that any of the following circumstances exist:

- (A) No other design or performance specification or qualified products list is available;
- (B) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (C) 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
- (D) Use of a brand name or equal specification is in the City's best interests.

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

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

Nonrestrictive Use of Brand Name or Equal Specifications. 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.

§27-29. Specifications; Brand Name

Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing agent makes a written determination that only the identified brand name item or items will satisfy the City's needs.

Competition. The purchasing agent 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 §27-12 (Sole Source Procurement).

§27-30. Construction Management

The purchasing agent shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the purchasing agent shall consider the City's requirements, its resources, and the potential contractor's capabilities. The purchasing agent 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.

§27-31. Bid Security

Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the purchasing agent to exceed \$100,000. Bid security shall be a bond provided by a surety company authorized to do business in the State of Nebraska, or the equivalent in cash, or otherwise supplied in a form satisfactory to the City. Nothing herein shall prevent the requirement of such bonds on construction contracts under \$100,000 when the circumstances warrant. Amount of Bid Security. Bid security shall be in an amount equal to at least 5% of the amount of the bid.

Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance by a bidder requires that the bid be rejected unless it is determined that the bid fails to comply only in a nonsubstantial manner with the security requirements.

Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as provided in §27-8 (Competitive Sealed Bidding), no action shall be had against the bidder or the bid security.

§27-32. Performance And Payment Bonds

When Required; Amounts. When a construction contract is awarded in excess of \$25,000, 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.

§27-33. 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.

§27-34. Fiscal Responsibility

Every contract modification, change order, or contract price adjustment under a construction contract with the City in excess of \$300 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.

§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 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 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.

§27-36. Authority To Debar

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing agent is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. The purchasing agent 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 months. The causes for debarment include:

- (A) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (B) Conviction under state or federal statutes 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;
- (C) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (D) Violation of contract provisions, as set forth below, of a character which is regarded by the purchasing agent to be so serious as to justify debarment action:
 - I. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - II. 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.
- (E) Any other cause the purchasing agent determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause listed in this chapter; or
- (F) For violation of the ethical standards set forth in Chapter 27, Article II.

§27-37. Decision To Debar

The purchasing agent 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 its rights concerning judicial or administrative review. A copy of the decision shall be mailed by certified mail, return receipt requested or otherwise furnished immediately to the debarred or suspended person.

§27-38. Finality Of Decision

A decision under §27-37 (Decision to Debar) shall be final and conclusive, unless the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the city council or commences a timely action in court in accordance with applicable law.

§27-39. Bid Protests

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 council. Protestors are urged to seek resolution of their complaints initially with the purchasing agent. 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 or reasonably would 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 three calendar days after such aggrieved person knows or reasonably would have known of the facts giving rise thereto.

Stay of Procurements During Protests. In the event of a timely protest under this section, the purchasing agent 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 council makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the City.

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 but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

§27-40. Contract Claims

Decision of the Purchasing Agent. All claims by a contractor against the City relating to a contract, except bid protests, shall be submitted in writing to the purchasing agent for a decision. The contractor may request a conference with the purchasing agent on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

Notice to the Contractor of the Purchasing Agent's Decision. The decision of the purchasing agent shall be promptly issued in writing, and shall be immediately mailed by certified mail, return receipt requested or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached.

Finality of Purchasing Agent's Decision. The purchasing agent's decision shall be final and conclusive unless the contractor files a timely claim under Neb. R.R.S. 16-726.

Failure to Render Timely Decision. If the purchasing agent does not issue a written decision regarding any contract controversy within 10 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

§27-41. Authority To Settle Protests or Claims

The purchasing agent is authorized to settle any protest regarding the solicitation or award of a City contract, or any claim arising out of the performance of a City contract, prior to an appeal to the city council or the commencement of an action in a court of competent jurisdiction.

§27-42. Remedies For Violations

Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the purchasing agent determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation shall be canceled or revised to comply with applicable law.

Prior to Award. If after bid opening or the closing date for receipt of proposals, the purchasing agent determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be canceled.

After Award. If, after an award, the purchasing agent determines that a solicitation or award of a contract was in violation of applicable law, then:

(A) If the person awarded the contract has not acted fraudulently or in bad faith:

(I.) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the City; or

(II.) The contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

(B) If the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interests of the City.

Article II. Ethics in Public Contracting

§27-43. Criminal Penalties

To the extent that violations of the ethical standards of conduct set forth in this article constitute violations of Nebraska or federal law, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this part.

§27-44. Employee Conflict Of Interest

It shall be unethical for any City employee to participate directly or indirectly in a procurement contract when the City employee knows that:

- (A) The City employee or any member of the City employee's immediate family has a financial interest pertaining to the procurement contract; or
- (B) Any other person, business, or organization with whom the City employee or any member of a City employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

A City employee or any member of a City employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

The provisions of this section shall not apply to the Mayor, members of the City Council, and members of appointed boards and commissions of the City, provided the participating person:

- (A) Makes a declaration on the record of the governing body, board or commission responsible for approving the contract regarding the nature and extent of his or her interest prior to official consideration of the contract;
- (B) Does not vote on the matter of granting the contract, except that if the number of members of the governing body, board or commission declaring an interest in the contract would prevent the body with all members present from securing a quorum on the issue, then all members may vote on the matter; and
- (C) Does not act for the governing body, board or commission which is party to the contract as to inspection or performance under the contract in which he or she has an interest.

If such participating person's parent, spouse, or child is an employee of the City, the participating person may vote on all issues of the contract which are generally applicable to (1) all employees or (2) all employees within a classification and do not single out his or her parent, spouse, or child for special action.

Any contract entered into with such participating person shall be subject to applicable competitive bidding requirements and shall be fair and reasonable to the City.

The receiving of deposits, cashing of checks, and buying and selling of warrants and bonds of indebtedness of the City by a financial institution shall not be considered a contract for purposes of this section.

§27-45. Gratuities And Kickbacks

Gratuities. It shall be unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

Contract Clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor.

§27-46. Contingent Fees

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

§27-47. Contemporaneous Employment

It shall be unethical for any City employee who is participating directly or indirectly in the procurement process to become or to be, while such a City employee, the employee of any person contracting with the governmental body by whom the employee is employed.

§27-48. Waivers; Conflicts Of Interest

The city council may grant a waiver from the employee conflict of interest provision (§27-44; Employee Conflict of Interest) or the contemporaneous employment provision (§27-47; Contemporaneous Employment) upon making a written determination that:

- (A) The contemporaneous employment or financial interest of the City employee has been publicly disclosed;
- (B) The City employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and
- (C) The award will be in the best interests of the City.

§27-49. Confidential Information

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

§27-50. Sanctions

Employees. The mayor may impose any one or more of the following sanctions on a City employee for violations of the ethical standards in this article:

- (A) Oral or written warnings or reprimands;
- (B) Suspension with or without pay for specified periods of time; or
- (C) Termination of employment.

Nonemployees. The city council may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:

- (A) Written warnings or reprimands;
- (B) Termination of contracts; or
- (C) Debarment or suspension as provided in §27-36 (Authority to Debar).

§27-51. Recovery Of Value Upon Breach

General Provisions. The value of anything transferred or received in breach of the ethical standards of this chapter by a City employee or a nonemployee may be recovered from both City employee and nonemployee.

Recovery of Kickbacks by the City. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

Article III. Contracts Funded with Federal Funds

§27-52. Contractor Records

If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

- (A) Requiring the contractor and subcontractors at any tier to maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (B) Requiring the contractor and subcontractor at any tier to provide to the City, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

§27-53. Patents

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

- (A) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to any discovery or invention arising out of the contract; and
- (B) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

§27-54. Copyrights

If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

§27-55. Federal Policy Requirements

If the contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as:

- (A) Equal employment opportunity;
- (B) Fair labor standards;
- (C) Energy conservation;
- (D) Environmental protection; or
- (E) Other similar socioeconomic programs, then, the purchasing agent shall include contract provisions giving the contractor notice of these requirements, and where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

§27-56. Buy American

If a contract is being funded in whole or in part by assistance from a federal agency, then the City shall adhere to the appropriate "Buy American" requirements of the federal agency providing the assistance.

§27-57. Energy Conservation

If a contract is being funded in whole or in part by assistance from a federal agency, then the City's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

§27-58. Favored Business Enterprises

Expand Participation. If a contract is being funded in whole or in part by assistance from a federal agency, the purchasing agent shall take affirmative steps to assure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.

Examples of Affirmative Steps. Affirmative steps to be taken shall include:

- (A) Including qualified small, women-owned, and minority businesses on solicitation lists;
- (B) Assuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
- (C) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, women-owned, and minority business participation;
- (D) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
- (E) Using the services and assistance of the Small Business Administration, or the Office of Minority Business Enterprise of the Department of Commerce, as required.

Pass-Through to Subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as listed in this section, in awarding its subcontracts.

§27-59. Labor Surplus Area Business

If a contract is being funded in whole or in part by assistance from a federal agency, the purchasing agent is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

Article IV. Miscellaneous Expenditure Act

§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 per diem for M&I; and
 - (iv) When travel is a partial day, 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) Plaques, certificates of achievement, or items of value 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	\$25.00
Board, Commission, Council Service	\$100.00
Award Ceremony/Farewell Tribute	\$50.00
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

Added by Ord. No. 7978, 1-24-1994

§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.