

CHAPTER 7
SELECTION OF PROFESSIONAL SERVICES
PROCUREMENT, CONFLICT OF INTEREST
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**CHAPTER 7
SELECTION OF PROFESSIONAL SERVICES
PROCUREMENT, CONFLICT OF INTEREST**

Article I. General

7.005. Definitions

As used in this chapter, unless the context specifically requires otherwise:

- (1) "Agency" means each agency of the state and each agency of a political subdivision thereof authorized to contract for architectural, engineering and land surveying services;
- (2) "Architectural services" means any service as defined in section 327.091, RSMo;
- (3) "Engineering services" means any service as defined in section 327.181, RSMo;
- (4) "Firm" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice the profession of architecture, engineering or land surveying and provide said services;
- (5) "Land surveying services" means any service as defined in section 327.272 RSMo.
- (6) "Project" means any capital improvement project or any study, plan, survey or program activity of a state agency or political subdivision thereof, including development of new or existing programs. (State law reference 8.287)

7.010. Preference to be given to Ashland and Missouri Products

1. In making purchases the City, or any department or employee thereof shall give preference to all commodities manufactured, mined, produced or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals, when quality is equal or better and delivered price is the same or less.
2. In making purchases the City, or any department or employee thereof shall give preference to all commodities manufactured, mined, produced or grown within the City of Ashland and to all firms, corporations or individuals whose place of business is located within the city limits of Ashland when quality is equal or better and delivered price is not more than ten percent (10%) higher. To be considered as having a place of business within the city limits, the firm, corporation or individual must be able to demonstrate a substantial and continuing business presence within the city.

7.015. Bid Proposals, Form

All requests for bids and proposals for supplies to be purchased shall be made in general terms and by general specifications and not by brand, trade name or other individual mark, provided such article to be purchased can be definitely described

without the designation of such brand, trade name or other individual mark. All such requests and bids shall contain therein a paragraph in easily legible print, reading as follows: "By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and additional preference shall be given to commodities manufactured, mined, produced or grown within the City of Ashland and to all firms, corporations or individuals whose place of business is located within the city limits of Ashland."

7.020. Roster of consultants

1. The City Clerk will maintain a roster, classified by category of professional service, of qualified firms interested in performing professional services for the City. Names of firms will be placed on the roster upon their request, at the request of the Mayor or members of the Board of Aldermen, or when recommended by City departments.
2. Each firm meeting the following minimum qualifications shall be deemed to be a qualified firm and meeting the qualifications of the City.
 - a. Duly authorized to conduct business in the State of Missouri in their particular profession.
 - b. Professional registration by the State of Missouri, if required.
 - c. At least one staff professional assigned to each project. Adequacy of personnel will be determined on a contract-by-contract basis against the City's estimate of manpower required to perform the work in the desired time frame.
3. Each firm listed on the roster shall be responsible for maintaining a current resume describing its qualifications and experience with the City Clerk.

Data which should be included is as follows:

- a. Firm name, address, and telephone numbers.
- b. Year established and former firm names (if applicable)
- c. Types of services for which it is qualified.
- d. Names of principals of the firm and states in which they are registered, if registration is required in that profession.
- e. Names of key personnel, with experience of each and length of time in the organization.
- f. Number of staff available for assignment.
- g. Outside consultants and associates usually retained.
- h. Current projects underway and estimated cost of each.

7.025. Bidding Procedure for construction projects

1. Competitive bids shall be required on all construction contracts for which more than Five Thousand and no/100 Dollars (\$5,000.00) has been extended and prior to the hour designated for the opening of bids. (amended Ordinance No. 1279, 1-07-2020)
2. Bids may be submitted at any time after the project has been officially advertised or invitations extended and prior to the hour designated for the opening of bids.
 - A. Bids submitted may be withdrawn or changed at any time before the official opening.
 - B. No changes shall be permitted after bids have been opened.
 - C. Bids shall be submitted on the proposal/bid form with all accompanying papers placed in a sealed envelope addressed to the City Administrator or other person authorized to receive same and endorsed with the bidders name and title of the project.
 - D. All bids will be opened by the City Administrator or other person authorized to receive same and read aloud publicly at the proper time so that all bidders and others interested may be present as witnesses and/or to tabulate amounts.
3. After the bids have been read, the City Administrator or other person authorized to receive same shall prepare a compilation of the bids to provide to the Board of Aldermen, who shall determine to whom the bids is to be awarded. If the City has retained an engineer or other consultant in connection with the contract, that individual shall be consulted in preparing the compilation.

Article II. Professional Services

7.100. Policy on contracts for architectural, engineering, land surveying services

It shall be the policy of the City of Ashland to negotiate contracts for architectural, engineering and land surveying services on the basis of demonstrated competence and qualifications for the type of services required and at fair and reasonable prices.

7.105. City to be furnished statement of firms qualifications and performance data

Present provisions of law notwithstanding, in the procurement of architectural, engineering or land surveying services, the City shall encourage firms engaged in the lawful practice of their professions to annually submit a statement of qualifications and performance data to the City. Whenever a project requiring architectural, engineering or

land surveying services is proposed, the City shall evaluate current statements of qualifications and performance data of firms on file together with those that may be submitted by other firms regarding the proposed project. In evaluating the qualifications of each firm the City shall use the following criteria:

- (1) The specialized experience and technical competence of the firm with respect to the type of services required;
- (2) The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;
- (3) The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules;
- (4) The firm's proximity to and familiarity with the area in which the project is located.

7.110. Negotiation for contract

1. The City shall list three highly qualified firms. The City shall then select the firm considered best qualified and capable of performing the desired work and negotiate a contract for the project with the firm selected.
2. For a basis for negotiations the City shall prepare a written description of the scope of the proposed services.
3. If the City is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated. The City shall then undertake negotiations with another of the qualified firms selected. If there is a failing of accord with the second firm, negotiations with such firm shall be terminated. The City shall then undertake negotiations with the third qualified firm.
4. If the City is unable to negotiate a contract with any of the selected firms, the City shall reevaluate the necessary architectural, engineering or land surveying services, including the scope and reasonable fee requirements, again compile a list of qualified firms and proceed in accordance with the provisions of this chapter.

7.120. State law not applicable

The City hereby adopts the procedure set forth in this chapter in lieu of the procedures set forth in sections 8.285 to 8.291 RSMo. The City recognizes that bids and proposals being sought using federal or state funds may require terms and conditions that conflict with this chapter. In those cases, the federal and/or state terms and conditions will apply. (amended 1-07-2020 Ordinance No. 1279)

7.125. Prohibition against contingent fees

1. Each contract entered into by the Board of Aldermen for professional services shall contain a prohibition against contingent fees as follows:

“No firm shall retain a person to solicit or secure a city contract for professional services upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.”

2. For the breach or violation of the foregoing provision, the Mayor and Board of Aldermen shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

7.130. Waiver

The Mayor and Board of Aldermen may waive any and all afore-mentioned procedural requirements in the best interests of the City.

7.135. Accounting and Legal Services

Nothing in this Chapter shall be construed as to require competitive bidding for accounting or legal services.

7.140. Purchasing of insurance policies, competitive bidding, when, renewal between bidding periods deemed extension

Any other law to the contrary notwithstanding, no contract shall be entered into by the City to purchase any insurance policy or policies unless the contract is submitted to competitive bidding at least every six years and the contract is awarded to the lowest or best bidder. The renewal of any insurance policy during any period between submissions of the contract to competitive bidding shall not constitute a separate and distinct contract for the time covered by the renewal but shall be treated only as an extension of an existing contract. (State law reference 376.696 RSMo.)

7.145. Depository for city funds, how selected

Boards of Aldermen in cities of the fourth class, at their first regular meetings in the months of January, April, July and October of each year, may select a depository for the funds of their respective cities, for the length of time and under the rules and regulations that are provided as prescribed by ordinance therefore. The rights and duties of the parties to the depository contract are as provided in section 110.010, RSMo. The deposits shall be secured by deposit of securities as required by sections 110.010 and 110.020, RSMo. The depository shall be a banking institution doing business within the city. If such depository cannot be selected, or such satisfactory arrangements made, the boards of aldermen may invest the moneys upon the terms and under the conditions provided by law for the loaning of county and school moneys. (amended Council Bill No. 2008-037, 9-02-08)

Article III. Procurement of Property, Equipment, or Materials

7.200. Advertisement for bids required when

All purchases of supplies, materials, equipment or services by the City shall be by competitive bid, except that purchases of less than Five Thousand Dollars (\$5,000.00) may be made on the open market. If the cost of any such purchase is expected to be over Five Thousand Dollars (\$5,000.00) but less than Seven Thousand Five Hundred Dollars (\$7,500.00) then price quotes shall be informally solicited from at least three prospective suppliers, and such quotes shall be recorded and retained in the City's records for a period of five years. If the cost of any such purchase is expected to exceed Seven Thousand Five Hundred Dollars (\$7,500.00), then advertisements for bids shall be inserted at least one (1) time in a newspaper of general circulation in the City of Ashland, Missouri, to appear at least one (1) week before such bids are to be opened, and bids shall also be solicited by mail from prospective suppliers. In all cases, the purchase shall be made from the lowest and or best bidder, except that the City shall have the right to reject any or all bids and then either solicit new bids or, in the case where a better price may be obtained on the open market, make the purchase on the open market, except that purchases from other government entities under the State Surplus Property Law and purchases found by the Board to be needed on an emergency basis, need not be competitively bid. (amended Ordinance No. 1009 12-02-14) (amended Ordinance No. 1279, 1-07-2020.)

7.205. Authorization for purchases

1. Any City official, officer or employee will be reimbursed for any purchase made on behalf of the City which is less than fifty dollars (\$50.00) if the City Treasurer is furnished with a receipt for the purchase promptly after the purchase and if the reimbursement is authorized by the City Administrator or an appropriate supervisor.
2. No employee of the City shall make any purchase on behalf of the City, without written authorization from the Administrative Supervisor of their Department. Administrative supervisory personnel are responsible for the proper spending of the budgets allotted to them. Department Heads must receive written approval from the City Administrator for purchases over One Thousand and no/100 Dollars (\$1,000.00).(amended Ordinance No. 1279, 1-07-2020)
3. The provisions of this subsection notwithstanding, the City Administrator may enter into contracts for purchases without following a competitive bidding process or a request for proposals process if the purchase is determined by supervisory personnel to be an emergency purchase. When an

emergency purchase is made, the City Administrator will immediately submit a written report to the Mayor, Board of Aldermen at the next regularly scheduled Board of Aldermen meeting. A copy of the invoice will be attached to the report and the report will explain the emergency situation in detail. (amended ordinance no. 1279, 1-07-2020)

4. The Board, by Resolution, may designate those persons authorized to use charge accounts set up in the City's name. Any such Resolution shall designate the limits of the authorization. Use of charge accounts shall be subject to the provisions of subsections one and two of this section. (amended by Ordinance No. 1009, December 2, 2014)
5. If a project with a budget limitation is bid under this subsection and the bid of the lowest and best, responsive and responsible bidder is for more than the authorized amount, the contract may be entered into only with the specific authorization of the Board of Aldermen.
6. The total amount of all change orders executed in connection with any contract for capital or public improvements authorized by this article shall not exceed the budgeted amount without the approval of the Board of Aldermen.
7. When appropriated funds are available, the City Administrator may contract for emergency work on public improvements and for repairs of public improvements requiring prompt attention without following the competitive bidding provisions of this article.
8. The City Administrator with approval of the Board of Aldermen may establish a purchasing policy that delegates the regular purchase of goods and services to City employees subject to specific dollar thresholds and within the constraints of the approved department budget. (amended 1-07-2020, Ordinance No. 1279)

7.208. Bids and requests for proposals required; exceptions.

Except as otherwise provided in this article, all contracts for purchases of supplies, materials, equipment and services which have not been specifically authorized by the Board of Aldermen shall be entered into only after a competitive bidding process or a request for proposals process.

The City Administrator may enter into contracts for emergency purchases without following a competitive bidding process or a request for proposals process. "Emergency purchases" are purchases necessitated by nonrecurring emergency situations posing a substantial danger to the health, safety and welfare of the citizens or of a risk of substantial financial loss to the city unless the required supplies, materials, equipment or services are obtained as expeditiously as possible. The department head requesting an

emergency purchase shall certify that the purchase is an emergency within the meaning of this section by a memorandum which sets forth the nature of the emergency. When an emergency purchase is made, the City Administrator will immediately submit a written report to the Mayor, Board of Aldermen at the next regularly scheduled Board of Aldermen meeting. A copy of the invoice will be attached to the report and the report will explain the emergency situation in detail.

The City Administrator may enter into contracts with sole source suppliers and governmental entities without following a competitive bidding process or a request for proposals process. "Sole source suppliers" are suppliers of supplies, materials, equipment or services which are unique or which are not available from more than one (1) competitive source in the normal course of business.

The City Administrator may enter into contracts for professional and other services without following a competitive bidding process or a request for proposals process when factors such as prior experience, skills, education, local knowledge or unique knowledge are considerations in selecting the contractor. This subsection shall not apply to contracts for auditing services for the annual fiscal audit or to contracts for architectural, engineering and land surveying services.

The City Administrator is encouraged to pursue informal bidding and requests for proposals in the above categories of exceptions whenever time and business conditions permit. (amended Ordinance No.1279, 1-07-2020)

7.210. Cooperative purchasing

The City Administrator or the administrator's designee is authorized to participate in cooperative purchasing programs with the United States or any agency of the United States; with the State of Missouri or any agency, municipality or political subdivision of the State of Missouri; with other states or any agency, municipality or political subdivision of any other state; or with any association of municipalities or political subdivisions; provided, that the cooperative purchasing program follows a competitive bidding process. (amended 7-15-2014, Ordinance No. 987)

7.220. Request for Proposals

The City Administrator may authorize a request for proposals process instead of a bidding process whenever the purchase of supplies, materials, equipment or services may be facilitated by such a process.

7.250. Procurement Cards

The City Administrator with approval of the Board of Aldermen may establish a procurement card policy that allows authorized card holders approved by the City Administrator to charge up to one thousand dollars (\$1,000.00) per transaction.

7.300. Recycled and environmentally preferable products.

For purposes of this section:

1. *Environmentally preferable product* means a product which by its chemical or physical nature has a less adverse impact on the environment when compared to a similar product with a different chemical or physical nature or a product whose manufacturing process is less harmful to the environment than the manufacturing process of an equivalent product.
2. *Post-consumer waste* means material generated by a consumer which has served its intended end use and has been separated or diverted from the solid waste stream for the purpose of collection, recycling and disposition.
3. *Recycled product* means a product that utilizes recycled materials or materials diverted from the waste stream, including an appropriate amount of post-consumer waste, in its manufacture and construction.

In evaluating bids and awarding contracts, the City Administrator is authorized to give preference to recycled and environmentally preferable products as follows:

1. The cost of recycled product may exceed by up to ten (10) percent the lowest priced bid on a comparable product which does not utilize recycled materials.
2. The cost of an environmentally preferable product may exceed by up to five (5) percent the lowest priced bid on a comparable product which is not environmentally preferable.

In order to qualify for recycled consideration on paper and paper products, proposed stock must meet U.S. Environmental Protection Agency recommended minimum content standards of selected papers and paper products. Standards identifying the minimum content of recovered materials and products other than paper products shall be done on a case by case basis. The City Administrator shall utilize standards established by industry organizations, federal agencies such as the Environmental Protection Agency, nationally recognized standards organizations such as the American Society for Testing and Materials and state agencies.

All bidders who wish to receive a preference on products made with recycled materials must properly complete, sign and return with their bid a certification of product content. The City Administrator is authorized to designate certain post-consumer recycled materials for use in city projects to demonstrate and encourage the use of these products. Wherever possible, markers shall be erected listing the recycled content of the products. These products shall not exceed ten thousand dollars (\$10,000.00) annually.

7.320. Debarment.

The City Administrator is authorized to debar a person from consideration for award of contracts for any of the following reasons:

1. Conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of integrity or honesty which currently, seriously and directly affects responsibility as a city contractor or vendor.
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
4. Deliberate failure without good cause to perform in accordance with contract specifications or within the time limit provided in the contract.
5. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor or vendor shall not be considered a basis for debarment.
6. The person is in arrears on any debt owed the city or has a history of being chronically in arrears on debts owed the city.
7. Any other cause so serious and compelling as to affect responsibility as a city contractor or vendor, including debarment by another governmental entity for any cause listed in this article.

The length of debarment shall not exceed three (3) years.

The City Administrator shall initiate a debarment by serving written notice of the debarment to the person the City Administrator intends to debar. The notice shall set forth the specific grounds for the debarment and advise the person of the right to appeal. The notice shall be served by registered or certified mail or by delivering a copy of the notice to the person subject to debarment or the person's agent or employee. The debarment shall take effect ten (10) days after service of the notice unless an appeal is taken to the Board of Aldermen. If an appeal is taken, the debarment shall not take effect until a final order upholding the debarment is entered by the Board of Aldermen or until the appeal is dismissed by the appellant.

Within ten (10) days after service of a written notice of debarment, the person affected by the notice may file a written request for a hearing before the Board of Aldermen contesting the debarment.

The Board of Aldermen shall set the matter for hearing on the record within thirty (30) days of the receipt of a request for a hearing. At least ten (10) days notice of the hearing shall be given to the affected person and to the City Administrator.

At the hearing, each party shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses and impeach any witness. Oral evidence shall be taken on oath or affirmation. All evidence shall be suitably recorded and preserved. The technical rules of evidence shall not apply, but the Board of Aldermen may exclude evidence which is irrelevant or repetitious. Each party shall be entitled to present oral arguments or written briefs at or after the hearing.

Within ten (10) working days of receipt of the transcript of the hearing, the city shall make written findings of fact and conclusions of law and issue a final order. Findings of fact shall be based upon competent and substantial evidence found in the record as a whole. A copy of the Board of Aldermen's order, findings of fact and conclusions of law, shall be delivered or mailed to the affected person.

An appeal from the Board of Aldermen's order shall be to the circuit court pursuant to chapter 536, RSMo.

Nothing in this section shall limit the authority of the City Administrator to accept the bid which in the judgment of the City Administrator is the lowest and best bid, or to reject any or all bids or to reject a bid on grounds which could have been used to debar the bidder.

7.340. Contracts involving hazardous materials.

In evaluating bids or proposals for contracts involving the transportation, handling or disposal of hazardous materials, the City Administrator and the head of the department requesting the contract shall consider the following factors:

1. The experience of the bidder in successfully completing similar projects;
2. The financial strength and stability of the bidder;
3. The ability of the bidder to provide adequate insurance to protect the city from the bidder's negligence; and
4. The history of the bidder in complying with federal and state environmental laws.

In awarding a contract involving the transportation, handling or disposal of hazardous materials, the City Administrator shall award the contract to the bidder who has been determined to be the best bidder, regardless of whether that bidder has submitted the lowest bid.

7.350. Sale, trade or lease of real property.

Except as otherwise provided in this section, real property owned by the city may be sold, traded or leased only when authorized by ordinance and only after competitive bids have been obtained. The real property may be sold, traded or leased only to the person submitting the highest and best bid.

City property may be sold, traded or leased without competitive bids:

1. To any person to whom the property has a unique or enhanced value because of its accessibility, configuration, location, size or use;
2. To any adjacent property owner at fair market value as determined by an appraisal;
3. When use of the property is limited to public purposes specified by the Board of Aldermen;

4. When the sale, trade or lease is part of a settlement in a condemnation proceeding;
and
5. When the Board of Aldermen determines that it is in the public interest to sell,
trade or lease the property to a particular person.

Farmland owned by the city may be leased by the City Administrator with the approval of the Board of Aldermen without obtaining competitive bids and without further council authorization under the following circumstances:

1. The person seeking to lease the property conducts a farming operation adjacent to the property sought to be leased from the city;
2. The person seeking to lease the property has previously leased the property and has demonstrated good farming practices; or
3. The property was acquired by the city from the person seeking to lease the property.

7.500. Fixed Asset Inventory.

Fixed assets should be capitalized only if they have an estimated life of more than 1 year following the date of acquisition and have a purchase cost of \$5,000 or more. Items which cost less than \$5,000 and/or have a life of one year or less will be expensed upon acquisition.

Purchase cost of a fixed asset includes freight, installation charges, carrying cases, adaptors and other items which are connected to the fixed asset and necessary for its operation or use.

A small tag with a fixed asset number will be issued by the City Treasurer for all items that can be reasonably tagged (physically). Said tag will be affixed to the fixed asset until such time it is declared surplus property and properly disposed of through the City Administrator as required by City ordinance.

Departments will notify the City Treasurer of any change in location or loss of a fixed asset.

Departments should exercise control over their non-capitalized fixed assets by establishing and maintaining adequate control procedures at the departmental level.

(amended Ordinance No, 1279, 1-07-2020)