

ORDINANCE NO. 1341

An Ordinance to Amend and Re-enact
Sections 2-4-1(d), 2-4-2, 2-4-3, 2-4-4, 2-4-5 and 2-4-7(d)
of the Mandan Code of Ordinances
Relating to Statement of Policy, Definitions, Competitive Bidding Required,
Exceptions, Conveyance of Property, and Bidding Procedure

Be it Ordained by the Board of City Commissioners as follows:

Sec. 2-4-1. Statement of policy.

(d) All suppliers, contractors and service providers doing business with the city must certify that they are in compliance with all federal, state and local laws, regulations and orders including but not limited to those regarding non-discrimination, wages and hours, worker's compensation and immigration. Failure of compliance may result in the cancellation of any city contract and exclusion from consideration for future contracts.

Sec. 2-4-2. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Construction means the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property. The term does not include the routine operation or maintenance of existing facilities, structures, buildings, or real property or demolition projects costing less than two hundred thousand dollars. (N.D.C.C. §48.01.2-01(4)).

Contractual services means services provided by entities other than the city, other governmental bodies or public utilities.

Emergency situation means sudden generally unexpected occurrence that requires immediate action to protect public health, safety, or property and which ends when the immediate threat to public health, safety, or property ceases and services are restored. The term does not include a lack of planning on the part of the city council, architect, engineer, landscape architect, or contractor. (N.D.C.C. §48-01.2-01(13))

Noncompetitive type or kind means supplies or services which are, by their nature, unique and not subject to competition, including professional services, management services, contracts with the manufacturer or seller or service agent for repair of equipment; services or supplies of a

specialized nature that are available only from one supplier or a limited number of suppliers who are not in competition with each other; supplies or services for which the local market is not competitive; or supplies or services for which purchase in the open market is called for, in order to obtain the best quality at the lowest price.

Public Improvement means any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building or any other public infrastructure or facility if the result of the improvement will be operated and maintained by the governing body. (N.D.C.C. §48-01.2-01(21))

Sec. 2-4-3. Competitive bidding required.

(a) All purchases of and contracts for supplies and contractual services, and all sales of ~~personal~~ property that have become obsolete or unusable must, except as otherwise provided in this article, be based on competitive bids.

(b) All supplies and contractual services, except as otherwise provided in this article, when the estimated cost exceeds \$5,000.00 must be purchased at public sale from the lowest and best bid meeting or exceeding specifications pursuant to N.D.C.C. §44-08-01.1 and subject to N.D.C.C. §44-08-01.

(c) All sales or dispositions of obsolete or unusable property, when the estimated value exceeds \$5,000.00, may be sold only at public sale pursuant to section 2-4-5.

(d) Purchases of supplies and contractual services, when the estimated cost is \$10,000.00 or less, may be made in the open market without competitive bidding, unless otherwise required by law. Purchases of supplies and contractual services, when the estimated cost is more than \$10,000.00 but less than \$75,000.00, may be made in the open market without competitive bids, provided that documentation is submitted showing that prices or informal quotes were solicited from a minimum of three suppliers or, if fewer than three suppliers are available, from all available suppliers, unless otherwise required by law.

(e) Any supplies, materials, equipment or contractual services previously competitively bid by the state or one of its agencies, for which the state or agency has made provision for participation by political subdivisions, may be purchased through the state or agency's bid letting upon approval by the board.

(f) When the estimated costs for the construction of a public improvement is in excess of two hundred thousand dollars, competitive bidding is required. (N.D.C.C. §§48-01.2-04, 48-01.2-02.1)

(g) If the estimated cost for construction of a public improvement is in excess of two hundred thousand dollars, plans, drawings and specifications for the improvement shall be procured from an architect or engineer. Plans, drawings, and specifications of an architect or engineer must be stamped and sealed by the date of the initial bid advertisement. (N.D.C.C. §§48-01.2-02, 48-01.2-02.1)

Sec. 2-4-4. Exceptions.

(a) Notwithstanding section 2-4-5, purchases of supplies or services of a noncompetitive type or kind, or purchases from other governmental bodies, or purchases made when, in the opinion of the board or its executive officer, an emergency requires immediate purchase of supplies or contractual services, may be made in the open market without competitive bidding.

(b) Whenever a purchase or contract for services, with an estimated cost that would require competitive bids under section 2-4-3 is made without competitive bids, a written report or a copy of the memo to the board requesting an exception must be filed with the bill or contract stating the reason why competitive bids were not called for and listing all suppliers contacted and quotes or estimates obtained. Procurement by competitive proposals shall apply the following requirements:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The city must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered;

(5) The city may use competitive proposal procedures for qualifications-based procurement of architectural./engineering (A/E) professional services whereby competitor's qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchaser other types of services though A/E firms are a potential source to perform the proposed effort.

(c) When the city governing body declares an emergency situation exists, the governing body may contract for the construction of a public improvement without seeking bids. (N.D.C.C. §48-01.2-04)

Sec. 2-4-5. Conveyance, sale or disposal of real or personal property.

(a) Personal property valued at less than \$2,500.00 that has been determined obsolete and is no longer used by the city may be sold at private sale, provided that the department's portfolio commissioner has given prior approval to the sale. The department manager of the department selling the obsolete property shall make a record of the sale containing a description of the obsolete property, the reason it is no longer used, the date of sale, the purchase price, and the party to whom the property was sold. Purchases of obsolete property owned by the city

may not be made by city employees or their agents except at public sale. Such sales must be reported to the board.

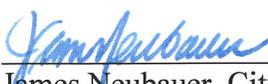
(b) Real or personal property valued at \$2,500.00 or more belonging to the city may be conveyed, sold or disposed of only as approved by a majority vote of all members of the board. Instruments affecting such conveyance, sale, lease or disposal are valid only when duly executed by the president of the board and attested by the city administrator. The board, by duly adopted resolution, shall determine whether real or personal property with an estimated value of less than \$5,000.00 shall be sold at public or at private sale. Real or personal property estimated by the board to be of a value of \$5,000.00 or more may be sold only at public sale or as provided under section 2-4-8. When a public sale is required or authorized, a notice containing a description of the property to be sold and designating the place, date and time of the sale must be published in the official newspaper once each week for two consecutive weeks, with the last publication being at least ten days in advance of the date set for the sale. The notice shall specify whether the bids are to be received at auction or as sealed bids as determined by the board. The property advertised must be sold to the highest bidder but not for a sum less than the minimum sales price if fixed prior to the sale, if the bid is deemed sufficient by a majority of the members of the board, unless all bids are rejected.

Sec. 2-4-7. Bidding procedure.

(d) If the estimated cost for the construction of a public improvement is in excess of two hundred thousand dollars, the governing body shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, in a daily newspaper having a general circulation in the area where the project is located, and in a trade publication, electronic plan service, builders exchange, or other industry-recognized method of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need be published only once each week for two weeks in the official newspaper with the first publication being at least fourteen days before the bid opening. (N.D.C.C. §§48-01.2-01, 48-01.2-02.1 and 48-01.2-04)

By: 
Tim Helbling, President,
Board of City Commissioners

Attest:


James Neubauer, City Administrator

First Consideration: June 2, 2020
Second Consideration and Final Passage: June 16, 2020