

CHAPTER 27

PURCHASING

- Art. I. General Provisions**
 - Div. 1. Purpose and Application, §27-1100 - §27-1103**
 - Div. 2. Definitions, §27-1200 - §27-1201**
 - Div. 3. Public Access to Procurement Information, §27-1300**
- Art. II. Purchasing Responsibilities of City Officers and Employees, §27-2100 - §27-2102**
- Art. III. Source Selection and Contract Information**
 - Div. 1. Methods of Source Selection, §27-3100 - §27-3110**
 - Div. 2. Rights and Responsibilities, §27-3200 - §27-3203**
 - Div. 3. Types of Contracts and Contract Administration, §27-3300 - §27-3306**
- Art. IV. Specifications, §27-4100 - §27-4103**
- Art. V. Procurement of Construction, Architect-Engineer and Land Surveying Services**
 - Div. 1. Bid Security and Performance Bonds, §27-5100 - §27-5103**
 - Div. 2. Architect-Engineer and Land Surveying Services, §27-5200 - §27-5201**
- Art. VI. Debarment or Suspension, §27-6100 - §27-6102**
- Art. VII. Appeals and Remedies, §27-7100**
- Art. VIII. Cooperative Purchasing, §27-8100 - §27-8106**
- Art. IX. General Rules and Regulations, §27-9100 - §27-9102**
- Appendix 1. Purchasing Policy and Procedure**

ARTICLE I. GENERAL PROVISIONS

DIVISION 1. PURPOSE AND APPLICATION

SEC. 27-1100. TITLE.

This chapter, along with any policies adopted pursuant thereto, shall be known as the "Moline Purchasing Code."

SEC. 27-1101. 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.

SEC. 27-1102. APPLICATION.

(a) This Code applies to contracts for the procurement of supplies, services, and construction, entered into by the City after the effective date of this ordinance, 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 any City department for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal or state assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal or state laws and regulations. Nothing in this ordinance shall prevent any City department from complying with the terms and conditions of any grant, gift, or request that is otherwise consistent with law. This chapter is adopted pursuant to the City's home rule powers and, where inconsistent, shall supersede any state requirements unless otherwise specified herein.

(b) Violation of any part of this Chapter 27 shall be deemed an ordinance violation punishable as set forth in Section 1-1107 of the Moline Code of Ordinances.

MOLINE CODE OF ORDINANCES

SEC. 27-1103. FILING OF PURCHASING POLICY; PUBLIC ACCESS; FEES.

The policy adopted and amended pursuant to Sec. 27-2101 shall be kept on file in the office of the city clerk and shall be available for public review at any time. Members of the public or interested vendors of the City may obtain a copy of said Policy by payment to the city clerk of an appropriate fee; said fee to be identical to that allowed for public records pursuant to the Freedom of Information Act.

DIVISION 2. DEFINITIONS

SEC. 27-1200. GENERAL.

Terms not defined herein shall have the meaning ascribed to them in Sec. 1-1101 of the Moline Code of Ordinances or, if no definition is contained therein, in the American Bar Association's Model Procurement Code for State and Local Governments, 2000 Edition and the Model Procurement Regulations, 2002 Edition.

SEC. 27-1201. DEFINITIONS.

- (1) **Architect-Engineer and Land Surveying Services.** Those professional services within the scope of practice of architecture, professional engineering, or land surveying as defined by the laws of the state.
- (2) **Change Order.** A written order signed and issued by the appropriate purchasing official of the City or designee, directing the contractor to make changes which the "changes" clause of the contract authorizes the City to order without the consent of the contractor.
- (3) **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.
- (4) **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, or the addition thereto of equipment.
- (5) **Contract.** All types of City agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.
- (6) **Cooperative Purchasing.** Means procurement conducted by, or on behalf of, more than one Public Procurement Unit, or by a Public Procurement Unit with an External Procurement Activity.
- (7) **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.
- (8) **Cost Data.** Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have actually been incurred by the contractor in performing the contract.
- (9) **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 provisions of this chapter, and a fee or profit, if any.

PURCHASING

- (10) **Invitation for Bids**. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
- (11) **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.
- (12) **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.
- (13) **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.
- (14) **Public Agency**. A public entity subject to or created by the City, (e.g. a City department).
- (15) **Public Procurement Unit**. Means either a Local Public Procurement Unit, a State Public Procurement Unit or an External Procurement Activity. A Local Public Procurement Unit means any county, city, town, and any other subdivision of the state or public agency of any such subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services and construction, and any nonprofit corporation operating a charitable hospital. An External Procurement Activity means any buying organization not located in this state which, if located in this state, would qualify as a Public Procurement Unit. An agency of the United States is an External Procurement Activity.
- (16) **Purchasing Official**. Shall mean that person designated by ordinance, or the city administrator, to procure a particular supply, service, product, item, or construction. For differing procurement, the official designated may be a different person.
- (17) **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.
- (18) **Request for Proposals**. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (19) **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.
- (20) **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.
- (21) **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. This term shall not include employment agreements or collective bargaining agreements.
- (22) **Specification**. Any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item for delivery.
- (23) **State Public Procurement Unit**. Means the Office of the Chief Procurement Officer and any other Purchasing Agency of this State.

MOLINE CODE OF ORDINANCES

- (24) **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.

DIVISION 3. PUBLIC ACCESS TO PROCUREMENT INFORMATION

SEC. 27-1300. PUBLIC ACCESS TO PROCUREMENT INFORMATION.

Procurement information shall be a public record to the extent provided in the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.) and 720 ILCS 5/33E-1 et seq., and shall be available to the public as provided in such statutes.

ARTICLE II. PURCHASING RESPONSIBILITIES OF CITY OFFICERS AND EMPLOYEES

SEC. 27-2100. RESPONSIBILITIES.

In accordance with this chapter, and subject to the supervision of the city administrator, the appropriate purchasing official shall procure or supervise the procurement of the supplies, services, or construction, as assigned by ordinance or the city administrator, and shall establish and maintain programs for specifications development, contract administration, and inspection and acceptance, within the particular department of each such appropriate purchasing official, all of which programs shall comply with the Moline Purchasing Code.

SEC. 27-2101. RULES AND OPERATIONAL PROCEDURES.

Consistent with this chapter, and with the approval of the City Council, by special ordinance, the city administrator may adopt operations procedures and other policies relating to the execution of this chapter.

SEC. 27-2102. DELEGATIONS TO OTHER OFFICIALS.

(a) Unless and until disapproved by the City Council on a case-by-case basis, the city administrator may delegate authority to purchase supplies, services, or construction items to other officials or employees, if such delegation is deemed necessary for the effective procurement of those items.

(b) Procurement authority for all construction; architect-engineer and land surveying services; and other professional services such as land appraisal contracts for roads, bridges, sidewalks, storm drains, and other projects funded by Motor Fuel Tax funds; Illinois or U. S. Department of Transportation grants, funds, or contracts; or special assessments is hereby delegated to the City Engineer or said Engineer's designee with the approval of the city administrator.

(c) Procurement authority for all legal services; legal representation or assistance; and other professional legal services is hereby delegated to the law director and as necessary to comply with Sec. 2-3203(e) of the Moline Code of Ordinances with the approval of the city administrator.

(d) Procurement authority for intergovernmental purchases shall be assisted by the city administrator and other officials as provided by the intergovernmental agreement providing for said intergovernmental purchases.

PURCHASING

**ARTICLE III. SOURCE SELECTION AND
CONTRACT INFORMATION**

DIVISION 1. METHODS OF SOURCE SELECTION

SEC. 27-3100. COMPETITIVE SEALED BIDDING.

(a) Conditions for Use. All contracts of the City shall be awarded by competitive sealed bidding, as provided for in the Moline Purchasing Code, except for the following subject matters:

1. Competitive Sealed Proposals (Sec. 27-3101)
2. Sole Source Procurement (Sec. 27-3105)
3. Emergency Procurements (Sec. 27-3106)
4. Public Announcement and Selection Process (Sec. 27-5200)
5. Contracting for Designated Professional Services (Sec. 27-5201)

(b) Invitation for bids/public notice. An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement. All notices of request for bids shall be given to the appropriate purchasing official prior to publication. Adequate public notice of the invitation for bids shall be given a reasonable time, not less than ten (10) calendar days prior to the date set forth therein, for the opening of bids. Such notice may, but need not, include publication in a newspaper of general circulation and shall state the place, date, and time of bid opening. Tabulations are required for all purchases over \$14,999.99 and must be prepared by the appropriate purchasing official.

(c) Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in the Moline Purchasing Code. 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. Telegraphic, electronic mail, facsimile, or other similar forms of bid submitted shall not be accepted. Only bids signed with original signature by a person authorized to sign a bid will be accepted. All bids and formal contracts shall be approved as to form by the law director.

(d) Bid opening; receipt; procedure. The receipt and opening of all bids shall follow the procedures set forth hereinbelow:

- (1) All sealed bids shall be received by the appropriate purchasing official, as set forth in the advertised invitation or notice, except for bids related to Parks or the Library, which shall be subject to such procedures as directed by the respective board of each; provided, however, that nothing herein shall be construed so as to prohibit voluntary compliance with these procedures by said boards or either or them.
- (2) The appropriate purchasing official shall publicly open and read aloud all bids as published in the invitation for bids.
- (3) The appropriate purchasing official shall record the bid information and maintain the bid file. At a minimum, the bid file shall include the amount of each bid, the name of each bidder, bid documents, and such other relevant information as the appropriate purchasing official directs, in writing, to include. The bid documents shall be retained for at least seven (7) years or as required by the State of Illinois (Local Records Unit). The bid file and procurement information shall be open for public inspection as provided in the Freedom of Information Act (5 ILCS 140/1 et seq.) and 720 ILCS 5/33E-1 et seq. and subject to the terms, qualifications and exceptions of each such act.

MOLINE CODE OF ORDINANCES

- (4) The soliciting department shall provide such information, as deemed necessary by the department director, to the Committee-of-the-Whole of the City Council or appropriate board.
- (5) The requirements of this section shall not apply to contracts awarded by methods other than competitive sealed bidding, which are referenced in Section 27-3100(a); provided, however, such referenced methods may not be used solely as a means to avoid compliance herewith.
- (e) 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 unless all bids are rejected. In the event the lowest responsible and responsive bid for a construction project exceeds available funds, as certified by the finance director, and such bid does not exceed such funds by more than five percent (5%), the city administrator or designee is authorized, when time or economic considerations preclude solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the lowest responsible and responsive bidder in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids.
- (f) Non-effective notice; procedures. When the public notice prescribed in Section 27-3100(b) is non-effective, or has historically been non-effective in terms of producing competitive bidding on public projects, or when it is believed such notice will be non-effective because of an insufficient supply of local or responding vendors, then the appropriate purchasing official may so find in writing, stating the reasons therefore in detail. Upon making such written finding, said appropriate purchasing official may, in addition to such required public notice, and after diligent search for other vendors, directly solicit all known vendors of the product and provide such solicitation to any member of the public, so long as such solicitation at all times maximizes competition and is conducted in the best interests of the City and fair, equitable, and competitive pricing.
- (g) 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 by the City where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written, telegraphic, electronic mail, or facsimile 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; such corrections shall only be made if they are in the best interests of the City. 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, in the City's discretion, be permitted to withdraw its bid if:
- (1) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - (2) 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 city administrator.
- (h) 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.
- (i) Tie bid. In the unlikely event that any bid, proposal, quotation, or other offer are in all respects equal, then separate equal size sheets of paper shall be placed in a hat, bearing the name of each separate identical bidder, and the mayor shall draw one sheet of paper at the next City Council meeting. The name of the bidder on such sheet as drawn by the mayor shall then be awarded the contract.

PURCHASING

SEC. 27-3101. COMPETITIVE SEALED PROPOSALS.

(a) Conditions for use. Unless otherwise directed by the Moline Purchasing Code, when the appropriate purchasing official 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 proposal method.

The words “practicable” and “advantageous” are to be given ordinary dictionary meanings. This section shall be interpreted broadly, so as to encourage flexibility of the appropriate purchasing official in achieving the purposes set forth in Sec. 27-1101.

(b) Request for Proposals. Proposals shall be solicited through a request for proposals. The request for proposals shall state the relative importance of price and other evaluation factors.

(c) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 27-3100(b) (Competitive Sealed Bidding, Invitation for Bids/Public Notice); provided that the minimum time shall be ten (10) calendar days unless the appropriate purchasing official determines in writing that emergency conditions dictate a shorter time period.

(d) 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 to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

(e) 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.

(f) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, and in the City’s best interest, 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 a detailed description of the basis on which the award is made.

SEC. 27-3102. CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS.

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 or otherwise, when it is for good cause or 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 for good cause or when in the best interests of the City as the City, in its sole and exclusive discretion, may determine. Notice of cancellation shall be sent to all businesses solicited, or from whom bids or proposals were received. 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 re-solicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

MOLINE CODE OF ORDINANCES

SEC. 27-3103. CHANGE ORDERS; AUTHORITY AND LIMITATION.

When a contract has been awarded by competitive bidding pursuant to Sec. 27-3100, a change order may be issued by the appropriate purchasing official (which for construction purposes shall be the city engineer) in an amount of not more than twenty thousand dollars (\$20,000.00) prior to approval by the City Council; provided, however, that all the following restrictions apply:

- (a) The change order is within budgeted amounts;
- (b) The change order is for additional products or services competitively bid;
- (c) The need for the product or service was not anticipated at the time of award;
- (d) The change order is in the best interest of the City.

SEC. 27-3104. CHANGE ORDERS; CAPITAL IMPROVEMENTS.

When a contract for a capital improvement project has been awarded by competitive bidding pursuant to Sec. 27-3100, a change order may be issued by the city engineer, the director of public works and/or the city administrator prior to the approval by the City Council, said change order not to exceed twenty thousand dollars (\$20,000.00) for contracts less than one hundred thousand dollars (\$100,000.00) or the lesser of fifty thousand dollars (\$50,000.00) or ten percent (10%) of the contract price for contracts of one hundred thousand dollars (\$100,000.00) or more; provided, however, that all the following restrictions apply:

- (a) The need for products or services was not anticipated at the time of award;
- (b) The need to accommodate unknown or unforeseen events occurring in the field;
- (c) That the City Council be informed of the change order in a timely manner, but in no case later than the next applicable committee-of-the-whole meeting;
- (d) That waiting for prior Council approval would delay the project;
- (e) The change order is in the best interest of the City.

SEC. 27-3105. SOLE SOURCE PROCUREMENT.

A contract may be awarded without competition when the appropriate purchasing official determines in writing, subject to review and approval of the city administrator, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The appropriate purchasing official 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 item(s) procured under each contract, and the identification number of each contract file.

SEC. 27-3106. EMERGENCY PROCUREMENTS.

Notwithstanding any other provisions of this ordinance, the appropriate purchasing official may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety, or where conditions exist such that a threat to public health, welfare, or safety is probable or imminent; 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. For purchases less than two thousand, five hundred dollars (\$2,500.00), the purchase order or purchase card transaction may constitute the "contract file" required herein. 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 item(s) procured under the contract, and the identification number of the contract file.

PURCHASING

SEC. 27-3107. COST OR PRICING DATA.

(a) Required Submissions Relating to the Award of Contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed one hundred thousand dollars (\$100,000.00) and is to be awarded by competitive sealed proposals pursuant to Sec. 27-3101 (Competitive Sealed Proposals), or by sole source procurement authority pursuant to Sec. 27-3105 (Sole Source Procurement).

(b) Exception. The submission of cost or pricing data relating to the award of a contract is not required when:

- (1) The contract price is based on adequate price competition;
- (2) The contract price is based on established catalogue prices or market prices;
- (3) The contract price is set by law or regulation; or
- (4) It is determined in writing by the appropriate purchasing official or, if a capital project, the public works director, that the requirements of Sec. 27-3108 (Cost or Price Analysis) may be waived, and the determination states the reasons for such waiver.

(c) Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost 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 ten thousand dollars (\$10,000.00).

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

- (1) Unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
- (2) It is determined in writing by the appropriate purchasing official or, if a capital project, the public works director, that the requirements of Sec. 27-3107(c) (Cost or Pricing Data; Required Submissions Relating to Change Orders or Contract Modifications) may be waived, and the determination states the reasons for such waiver; or
- (3) The City department or division submits a certification demonstrating that the changes comply with 720 ILCS 5/33E-1 et seq.

(e) Certification Required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this rule, 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.

(f) 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.

MOLINE CODE OF ORDINANCES

SEC. 27-3108. COST OR PRICE ANALYSIS.

A cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under Sec. 27-3100 (Competitive Sealed Bidding) except as the City Council directs otherwise, from time to time, by a written purchasing policy. A written record of such cost analysis or price analysis, when required, shall be made a part of the contract file.

SEC. 27-3109. BID AND PERFORMANCE BONDS ON SUPPLY OR SERVICE CONTRACTS.

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the appropriate purchasing official deems advisable to protect the City's interests.

SEC. 27-3110. FISCAL RESPONSIBILITY.

Every contract modification, change order, or contract price adjustment in excess of twenty thousand dollars (\$20,000.00) under a construction contract with the City shall be subject to prior approval by the City Council after receiving a report from the department director as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.

DIVISION 2. RIGHTS AND RESPONSIBILITIES

SEC. 27-3200. CONTRACT RENEWALS; NON-COMPETITIVE.

Contract renewals which are maintenance contracts or contracts of service, which are not subject to competitive bidding practices generally, may be executed by City staff, so long as all of the following apply:

- (a) The written contract or other document is identical to that executed in prior years and approved as to form by the law director or, if not identical, then that such document is substantially similar to documents used in prior years, and is again submitted, along with the original agreement, to the law director for subsequent review and approval as to form;
- (b) The amount has been approved in the City's annual budget process;
- (c) The service renewed on an annual basis in the contract is not a contract for new service but only a renewal of existing service;
- (d) The appropriate purchasing official has made a written determination that the item is not subject to competitive bidding or solicitation of competitive proposals and that such solicitation would not reduce or lessen the price of said service;
- (e) That all performance bonds and/or appropriate insurance, for the particular contract or contract of service, if any is so required, is renewed in the City's then prevailing amounts or requirements. Any contract executed in accordance with this section, must be reviewed no less than bi-annually.

A contract may be renewed or extended with the current vendor for a period of up to three (3) years, in conjunction with Section 27-3100 of the Code. Conditions for extending those contracts would include extensive preparation of documents, no change in price, statute and/or labor agreement requirements. Items falling into this category include, without limitation:

- * Intergovernmental training programs(s).
- * Printing or engraving of bonds.
- * Contracts for utility service (i.e. lights, water, heat, telephone).

PURCHASING

- * Evidences of indebtedness.
- * Governmental & Intergovernmental purchasing arrangements.
- * Certain computer/information services contracts.
- * Insurance contracts.
- * Auditing services.
- * Financial services.

SEC. 27-3201. RESPONSIBILITY OF BIDDERS AND OFFERORS.

(a) Determination of Non-Responsibility. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the appropriate purchasing official. Without limitation, the unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

(b) 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 appropriate purchasing official or the law director, without prior written consent by the bidder or offeror, except as otherwise required by law.

SEC. 27-3202. RIGHT TO INSPECT PLANT.

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

SEC. 27-3203. RIGHT TO AUDIT RECORDS.

(a) 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 Sec. 27-3107 (Cost or Pricing Data) to the extent that, in the City's judgment, 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.

(b) 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 (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract.

DIVISION 3. TYPES OF CONTRACTS AND CONTRACT ADMINISTRATION

SEC. 27-3300. TYPES OF CONTRACTS.

(a) 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 said contract is approved as to form by the law director 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

MOLINE CODE OF ORDINANCES

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.

(b) Multi-Term Contracts.

- (1) 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; provided further that no such contract shall exceed a period of twenty years. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.
- (2) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:
 - a. That estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - b. That such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in City procurement.
- (3) Notwithstanding anything herein to the contrary, renewal of non-competitive multi-term contracts shall be as provided in Section 27-3200.
- (4) 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 unless otherwise agreed in such contract. The cost of cancellation may be paid from any appropriations available for such purposes.

(c) Multiple Source Contracting.

- (1) 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) (810 ILCS 5/2-306-1).
- (2) 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 this chapter or the written purchasing policy adopted from time to time by the City Council, 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.
- (3) 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:
 - a. 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
 - b. The City shall reserve the right to take bids separately if the appropriate purchasing official approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the City.

PURCHASING

- (4) 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.
- (5) Determination Required. The appropriate purchasing official shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

SEC. 27-3301. REPORTING OF ANTI-COMPETITIVE PRACTICES.

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the state's attorney and the law director.

SEC. 27-3302. CITY PROCUREMENT RECORDS.

(a) 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 appropriate purchasing official.

(b) Retention of Procurement Records. All procurement records shall be retained and disposed of by the City in accordance with records retention guidelines and schedules approved by the Illinois State Local Records Commission.

SEC. 27-3303. CONTRACT CLAUSES AND THEIR ADMINISTRATION.

(a) 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 appropriate purchasing official, or, if a capital project, the public works director or other City official specified in the written purchasing policy from time to time adopted by the City Council, after consultation with the law director, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:

- (1) The unilateral right of the City to order in writing changes in the work within the scope of the contract;
- (2) 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;
- (3) Variations occurring between estimated quantities of work in contract and actual quantities;
- (4) Defective pricing;
- (5) Liquidated damages;
- (6) Specified excuses for delay or nonperformance;
- (7) Termination of the contract for default;
- (8) Termination of the contract in whole or in part for the convenience of the City;
- (9) Suspension of work on a construction project ordered by the City; and
- (10) 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;
 - a. When the contract is negotiated;

MOLINE CODE OF ORDINANCES

- b. When the contractor provides the site or design; or
- c. When the parties have otherwise agreed with respect to the risk of differing site conditions.

(b) Price Adjustments.

- (1) 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:
- a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - b. By unit prices specified in the contract or subsequently agreed upon;
 - c. 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;
 - d. In such other manner as the contracting parties may mutually agree; or
 - e. 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 fee as computed by the City, as accounted for in accordance with reference to costs principals and subject to the provisions of the City's chapter concerning purchasing.
- (2) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Sec. 27-3107 (Cost or Pricing Data).

(c) Standard Clauses and Their Modification. The appropriate purchasing official, after consultation with and permission from the law director, may establish standard contract clauses for use in City contracts. If the appropriate purchasing official establishes any standard clauses addressing the subjects set forth in Sec. 27-3303(a), such 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.

SEC. 27-3304. 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 maintained by each department or division for whom the contract is being performed. This provision shall be independent of any other requirement to maintain contracts or copies thereof imposed elsewhere in the Moline Purchasing Code.

SEC. 27-3305. COST REIMBURSEMENT PROVISION.

The City shall follow applicable federal rules and regulations or grant conditions whenever federal funds are used in a procurement and cost reimbursement principles are required by such rule, regulation, or grant condition. The appropriate purchasing official shall establish and require provisions relating to cost reimbursement contracts, and said provisions shall be followed whenever a cost reimbursement contract is awarded pursuant to the Moline Purchasing Code.

SEC. 27-3306. RESPONSIBILITY FOR SELECTION OF METHODS OF CONSTRUCTION CONTRACTING MANAGEMENT.

The public works director shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the public works director shall consider the City's requirements, its resources, and the potential contractors' capabilities. The public works director 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. Any final contract selected by the public works director must still be approved by the City Council and approved as to form by the law director.

PURCHASING

ARTICLE IV. SPECIFICATIONS

SEC. 27-4100. QUALIFIED PRODUCTS LIST.

The appropriate purchasing official may designate a qualified products list; provided, the state or federal government has performed all necessary testing on the products listed thereon, the state or federal government has included said products on a qualified products list, and the appropriate purchasing official has determined that the state or federal government's specifications are sufficiently similar to City requirements to allow the use of the state or federal government's qualified products list in a City procurement.

SEC. 27-4101. BRAND NAME OR EQUAL SPECIFICATION.

(a) Use. Brand name or equal specification may be used when the appropriate purchasing official determines in writing that:

- (1) No other design or performance specification or qualified products list is available; or
- (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification; or
- (3) 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
- (4) Use of a brand name or equal specification is in the City's best interests.

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

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

(d) Nonrestrictive Use of Brand Name or Equal Specification. 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.

SEC. 27-4102. BRAND NAME SPECIFICATION.

(a) Use. Since use of a brand name specification is restrictive of product competition, it may be used only when the appropriate purchasing official makes a written determination that only the identified brand name item or items will satisfy the City's need; such written determination shall be approved, in writing, by the city administrator prior to procurement.

(b) Competition. The appropriate purchasing official 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 Sec. 27-3105 (Sole Source Procurement).

MOLINE CODE OF ORDINANCES

SEC. 27-4103. LEGAL REQUIREMENTS.

If a procurement is funded in whole or part by federal or state funds, then the specifications and general conditions or contract shall state all applicable requirements of federal or state public policy including but not limited to:

- (1) Equal employment opportunity;
- (2) Fair labor standards;
- (3) Energy conservation;
- (4) Prevailing wages;
- (5) Environmental protection;
- (6) Buy American or other labor or material preferences;
- (7) Affirmative action and contract set asides;
- (8) Wage, hour, and other contractor record keeping requirements;
- (9) Patent, copyright, and other intellectual property ownership protections; and
- (10) Other similar socioeconomic programs.

In addition, the specifications and general conditions, or the contract, shall state any mandatory legal requirements.

ARTICLE V. PROCUREMENT OF CONSTRUCTION, ARCHITECT-ENGINEER, AND LAND SURVEYING SERVICES

DIVISION 1. BID SECURITY AND PERFORMANCE BONDS

SEC. 27-5100. BID SECURITY.

(a) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts. Bid security shall be a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the City. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid.

(b) Rejection of Bids for Noncompliance with Bid Security Requirements. Noncompliance with bid security requirements shall require that the bid be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements.

(c) Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as set forth in Sec. 27-3100(g) (Competitive Sealed Bidding; Correction or Withdrawal of Bids; Cancellation of Awards), no action shall be had against the bidder or the bid security.

PURCHASING

SEC. 27-5101. ALTERNATE PROCEDURES.

Nothing in this Article V shall prevent the City from following the provisions of the Architectural, Engineering and Land Surveying Services Act (50 ILCS 510/1 et seq.).

SEC. 27-5102. CONTRACT PERFORMANCE AND PAYMENT BONDS.

(a) When Required – Amounts. When a construction contract is awarded in excess of ten thousand dollars (\$10,000.00), the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract:

- (1) A performance bond satisfactory to the City, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the City, in an amount equal to one hundred percent (100%) of the price specified in the contract;
- (2) A payment bond satisfactory to the City, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and materials 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 one hundred percent (100%) of the price specified in the contract; and
- (3) Nothing herein is intended to prohibit the requirement of a combined performance and labor and material payment bond in the amount of one hundred percent (100%) of the price specified in the contract.

(b) Reduction of Bond Amounts. When a construction contract is awarded in an amount less than ten thousand dollars (\$10,000.00), a combined performance and labor and material payment bond or escrow agreement in an amount equal to one thousand dollars (\$1,000.00) shall be required.

(c) 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 subsection (a) of this section.

(d) 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 ninety (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 ninety (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.

(e) 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.

MOLINE CODE OF ORDINANCES

SEC. 27-5103. 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.

**DIVISION 2. ARCHITECT-ENGINEER AND
LAND SURVEYING SERVICES**

SEC. 27-5200. PUBLIC ANNOUNCEMENT AND SELECTION PROCESS.

(a) Public Announcement. Unless the City has a satisfactory relationship with one or more firms providing such services, it is the policy of the City to announce publicly all requirements for architect-engineer 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 appropriate purchasing official shall request firms to submit a statement of qualifications and performance data.

(b) Selection Process. A selection committee composed of three members, including the director of public works, a person to be appointed by the city administrator, and the director of a City department in need of the architect-engineer or land surveying services shall conduct discussions with no less than three (3) 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 (3) 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.

(c) Negotiation. The public works director shall negotiate a contract with the firm considered to be the most qualified for architect-engineer or land surveying services at compensation which the public works director determines in writing to be fair and reasonable to the City. In making this decision, the public works director shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the public works director be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the public works director determines to be fair and reasonable to the City, negotiations with that firm shall be formally terminated. The public works director shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the public works director shall formally terminate negotiations. The public works director shall then undertake negotiations with the third most qualified firm. Should the public works director 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 public works director shall continue negotiations in accordance with this section until an agreement is reached.

SEC. 27-5201. CONTRACTING FOR DESIGNATED PROFESSIONAL SERVICES.

(a) Authority. For the purpose of procuring the services of accountants, physicians, attorneys, and dentists, as defined by the laws of the state, any department or division requiring such services may procure them on its own behalf, in accordance with the selection procedures specified in the Moline Purchasing Code (Sec. 27-5201(b)) and pursuant to written policies adopted from time to time by the City Council. A department or division procuring such services shall consult with the appropriate purchasing official. No contract for the services of legal counsel may be awarded without the written consent and approval of the law director.

PURCHASING

- (b) Selection Procedure.
- (1) Conditions for use. Except as provided under Sec. 27-3105 (Sole Source Procurement) or Sec. 27-3106 (Emergency Procurements), the professional services designated in subsection (a) of this section shall be procured in accordance with this subsection.
- (2) 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 department or division 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 on an annual basis.
- (3) Public Announcement and Form of Request for Proposals. Adequate notice of the need for such services shall be given by the department or division requiring the services through a request for proposals to those submitting an annual statement of qualifications and, unless at least three (3) persons have submitted an annual statement of qualifications and interest in a particular type of work, or, unless the city administrator makes a written determination that such procedure is impracticable in a particular circumstance, or, unless governed by the purchasing policy adopted pursuant hereto, in a newspaper of general circulation published in the City. 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.
- (4) Discussions. The director of a department or division 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.
- (5) Award. Award shall be made to the offeror determined in writing by the director of the department or division 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.

ARTICLE VI. DEBARMENT OR SUSPENSION

SEC. 27-6100. AUTHORITY TO DEBAR OR SUSPEND.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the appropriate purchasing official, after consulting with the law director, is authorized to debar a person for cause from consideration or award of contracts. The debarment shall be for a period of not more than three years unless otherwise provided by law. After consultation with the law director, the appropriate purchasing official 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 (3) months. The causes for debarment include:

- (1) 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;

MOLINE CODE OF ORDINANCES

- (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 business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the appropriate purchasing official to be so serious as to justify debarment action:
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. 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;
- (5) Any other cause the appropriate purchasing official determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause; and
- (6) For violation of the ethical standards set forth in 720 ILCS 5/33E-1 et seq.

SEC. 27-6101. DECISION TO DEBAR OR SUSPEND/NOTICE.

The appropriate purchasing official, after consultation with the law director, 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 such person's rights concerning judicial or administrative review. A copy of the decision required by this section shall be mailed or otherwise furnished immediately to the debarred or suspended person.

SEC. 27-6102. FINALITY OF DECISION.

A decision under Section 27-6101 (Decision to Debar or Suspend/Notice) shall be final and conclusive, unless fraudulent, or unless the debarred or suspended person within ten (10) days after receipt of the decision takes an appeal to the City Council. If unsatisfied after such an appeal, the debarred or suspended person may then commence a timely action in court in accordance with applicable law, but in no event after thirty (30) days has elapsed from the date of decision on appeal to the City Council.

ARTICLE VII. APPEALS AND REMEDIES

SEC. 27-7100. BID PROTESTS.

(a) 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 administrator. Protestors are urged to seek resolution of their complaints initially with the appropriate purchasing official. 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 and should 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 ten (10) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

PURCHASING

(b) Stay of Procurements During Protests. In the event of a timely protest under subsection (a) of this section, the appropriate purchasing official 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 administrator makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the City.

(c) 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, said protesting bidder or offeror shall receive only bid preparation costs other than attorney's fees; in no event shall attorney's fees be awarded hereunder.

ARTICLE VIII. COOPERATIVE PURCHASING

SEC. 27-8100. COOPERATIVE PURCHASING AUTHORIZED.

The City may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more Public Procurement Units or External Procurement Activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended State Public Procurement Unit contracts which are made available to Public Procurement Units. Such cooperative purchasing shall be conducted pursuant to Article VIII.

SEC. 27-8101. SALE, ACQUISITION, OR USE OF SUPPLIES BY A PUBLIC PROCUREMENT UNIT.

The City may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit or independent of the requirements of Article III (Source Selection and Contract Formation) of this Code.

SEC. 27-8102. COOPERATIVE USE OF SUPPLIES OR SERVICES.

The City may enter into an agreement, independent of the requirements of this Code, with any other Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties, so long as approved by the City Council.

SEC. 27-8103. JOINT USE OF FACILITIES.

The City may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit under the terms agreed upon between the parties.

SEC. 27-8104. SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL SERVICES.

(a) Supply of Personnel. The city administrator is authorized, in the exercise of appropriate discretion, upon written request from another Public Procurement Unit, to provide personnel to the requesting Public Procurement Unit. The Public Procurement Unit making the request shall pay the Public Procurement Unit providing the personnel the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.

(b) Supply of Services. The informational, technical, and other services of any Public Procurement Unit may be made available to any other Public Procurement Unit provided that the requirements of the Public Procurement Unit tendering the services shall have precedence over the requesting Public Procurement Unit. The requesting Public Procurement Unit shall pay for the expenses of the services so provided, in accordance with any agreement between the parties.

MOLINE CODE OF ORDINANCES

**SEC. 27-8105. PUBLIC PROCUREMENT UNITS IN COMPLIANCE WITH
CODE REQUIREMENTS.**

Where the Public Procurement Unit administering a cooperative purchase complies with the requirements of this Code, any Public Procurement Unit participating in such a purchase shall be deemed to have complied with this Code. Public Procurement Units may not enter into a cooperative purchasing agreement for the purpose of circumventing this Code.

SEC. 27-8106. CONTRACT CONTROVERSIES.

Contract controversies arising under a cooperative purchasing agreement shall be resolved in the manner specified in the intergovernmental purchase agreement authorizing said purchasing or, if none is so specified, in accordance with the procedures set forth in this Code.

(Appendix 1 begins on next page)

PURCHASING

APPENDIX 1.

**CITY OF MOLINE
PURCHASING POLICY AND PROCEDURE**

The procedures listed below shall be followed for purchases of goods, supplies, services, repairs, equipment and renovations to physical properties. **Department directors will ensure compliance with this policy.**

METHODS OF PURCHASE AND APPROVAL

<u>EST. VALUE</u>	<u>METHOD</u>	<u>#QUOTES</u>	<u>SOLICITATION</u>	<u>APPROVAL</u>
\$1,500-\$2,499.99	Phone Quotations	3	Supervisor	Supervisor
\$2,500-\$14,999.99	Written Quotations	3	Supervisor	Dept. Director
\$15,000+	Competitive sealed	NA	Dept. Director	Council/Board
Sole Source	Documentation	NA	Supervisor	Dept. Director
Emergency/Blanket Procurement	Appropriate Purchasing Official w/ documentation	NA	Dept. Director Administrator*	City Council

EMERGENCY ITEMS:

Emergency procurement shall be as specified in Section 27-3106.

Nothing in this policy shall prevent the City Council from requiring competitive sealed bids or proposals, as the Council may determine on a case-by-case basis. All appropriate documentation required in the Code must be met.

Publication and notice shall be as specified in Section 27-3100.

PROCEDURES AND RESPONSIBILITIES

SUPERVISORS:

1. Coordinate buy with appropriate purchasing official, and assist as required.
2. Select proper method for purchasing.
3. Prepare specifications and documents.
4. Include on board or committee-of-the-whole agenda, if required, for solicitation and approval.
5. Prepare Agreement Form if not prepared under bid documents.
6. Monitor contract compliance.

MOLINE CODE OF ORDINANCES

DEPARTMENT DIRECTOR:

1. FYI committee-of-the-whole/board on items bids in excess of fourteen thousand, nine hundred and ninety-nine and 99/100 dollars (\$14,999.99).
2. Comply with method of purchase and approval procedures.
3. Review bid/proposal documents, PRIOR to issuance.
4. Review recommended purchases PRIOR to board/committee-of-the-whole/City Council consideration.
5. Review Agreement Form PRIOR to submission to law director.

APPROPRIATE PURCHASING OFFICIAL:

1. Reviews, assembles, duplicates and prepares all bid documents for vendor distribution. Contacts potential vendors.
2. Publish bid notices (Departments must give the appropriate purchasing official seventy-two (72) hours notice, PRIOR to publishing).
3. Accept, open and review all bids with department director or designated staff.
4. Prepare tabulations on items over fourteen thousand, nine hundred and ninety-nine and 99/100 dollars (\$14,999.99).
5. Make recommendation to department director or designated staff on proposals received.
6. Issue Purchase Orders and Blanket Purchase Orders, as required.

* Emergency procurements may be approved after purchase has taken place and shall require final approval of the City Administrator.

** On all renovations to physical properties and on new construction, the department director is responsible for gathering required documents. Procurement authority for all architect-engineering services, land surveying services, other related professional services, and construction of municipal public works is assigned to a three-member selection committee composed of the public works director, the appropriate purchasing official and the director of the using department.

(Ord. No. 2003-02-04; Sec. 27-2102 (b) repealed; Sec. 27-2102 (b) enacted; 02/25/03; Ord. No. 96-3-1; Sec. 27-3100 (b) repealed; new §(b) enacted; 03-12-96; Ord. No. 2000-03-11; new Sec. 27-3102 enacted; 03/28/2000; Ord. No. 2002-01-05; new Sec. 27-3103, "CHANGE ORDERS; CAPITAL IMPROVEMENTS," enacted; 01/22/02; Ord. No. 2002-01-05; new Sec. 27-3103, "CHANGE ORDERS; CAPITAL IMPROVEMENTS," enacted; 01/22/02; Ord. No. 2003-05-05; references to standing committees changed to "City Council" or "Committee-of-the-Whole" throughout the Code; 05/13/03; Ord. No. 96-3-1; Rule 27-1 (c) repealed; new subsection enacted; 03-12-96; Ord. No. 96-3-1; Rule 27-1 (g) repealed; reserved for later use; 03-12-96; Ord. No. 3009-2006; Rule 27-6 repealed; new Rule 27-6 enacted; 03/28/06; **Ord. No. 3023-2008; Chapter 27 repealed in its entirety; new Chapter 27 enacted; 03/25/08**)