

**AN ORDINANCE OF THE CITY OF APPLETON CITY, MISSOURI, TO ENACT A NEW ARTICLE II OF CHAPTER 135 RELATED TO PROCUREMENT OF SERVICES AND PROPERTY PURSUANT TO FEDERAL GRANTS.**

**WHEREAS**, the City of Appleton City has and likely will continue to undertake public works and other projects partially or wholly funded by grants from federal governmental agencies; and

**WHEREAS**, the Board of Aldermen has previously enacted various purchasing and procurement provisions in Chapter 135 of the City Code; and

**WHEREAS**, the Board desires to create specific procurement and purchasing provisions for these federally funded projects to comply with federal laws and regulations.

**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF APPLETON CITY, MISSOURI, AS FOLLOWS:**

**SECTION 1.** That the City of Appleton City Municipal Code is hereby amended by creating a new Article II in Chapter 135 as follows:

**ARTICLE II - Procurement Requirements for Federally Funded Projects**

Section 135.200 Applicability.

The provisions of this Article shall only apply to the procurement of services, materials, equipment, and other supplies for construction or maintenance projects partially or wholly funded by funds from a federal agency, order, or statute. In the event that applicable federal or state laws or regulations conflict with this Article, the federal or state laws or regulations shall take priority.

Section 135.210 General Purchasing Provisions.

a) Informal Purchases

(1) Small Purchases. For purchases below \$250,000 (or the Simplified Acquisition Threshold as defined by FAR at 48 CFR part 2, subpart 2.1, whichever is less) but greater than \$10,000 (\$2,000 in the case of construction projects subject to Davis Bacon requirements) price or rate quotes must be obtained from two or more qualified sources following the affirmative action provision of this policy and all provisions regarding fair and unrestricted competition, provided, however, that if the City Purchasing limits set forth above require a more rigorous process, the City process shall be followed.

(2) Micro Purchases. For purchases below \$10,000, the purchasing employee shall follow the City policy.

b) Large purchases with a value of \$50,000 or more must follow a sealed bid process as outlined herein.

c) Purchases at or exceeding \$250,000 or construction projects of any value that are funded with federal dollars must follow a sealed bid process as outlined below and also follow any procurement guidance as outlined in the grant agreement. In addition, a pricing analysis must be completed by the purchasing agent or a qualified consultant prior to issuing the request for proposal to ensure that there is a reasonable estimate against which to compare bid proposal pricing.

- d) For purchases that use Federal Funding, no local or State purchasing preference shall be applied.
- e) **INTERNAL CONTROLS**
  - (1) The City will maintain effective internal control over the Federal award providing reasonable assurance that the City is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.
  - (2) The City will take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
  - (3) The City will take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive.
- f) **CERTIFICATION**
  - (1) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the City, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims, or otherwise.”
- g) **ADVANCE PAYMENTS AND REIMBURSEMENTS**
  - (1) Payment methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the City whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means.
  - (2) Advanced payments must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the City to carry out the purpose of the approved program or project. Any advanced payments must be consolidated to cover anticipated cash needs.
  - (3) The City shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs.

Section 135.220 Competitive Bidding Process

- a) This Section shall apply when federal laws or regulations require a competitive bidding process to purchase or procure services, materials, equipment, or other supplies.
- b) **BID SPECIFICATIONS.**
  - (1) A list of bid specifications shall be prepared for each purchase using the sealed bid process. Bid specifications shall include at a minimum, the following:
    - (2) Bid name.
    - (3) Bid submission deadline.
    - (4) Date, location, and time of bid opening.
    - (5) Specifications for the project or services including the quantity, design, and performance features.
    - (6) Bond and/or insurance requirements.
    - (7) A copy of the proposed contract.
    - (8) Any special requirements unique to the project or purchase.
    - (9) Delivery or completion date.

- (10) For construction projects, language that sets a requirement for a bid guarantee or bid bond in the amount of 5% of the bid price from all bidders, as well as performance and payment bonds in the amount of 100% of the contract price from the contractor awarded the bid. The bidders must also include costs for Davis Bacon compliance if that is a requirement of the federal agency providing the funding.
  - (11) If the project involves the construction or repair of City property and the amount is \$75,000 or more, the specifications shall indicate that prevailing wage requirements must be met.
  - (12) If the purchase is for more than \$5000, the specifications shall indicate that compliance with §285.530 RSMo.
  - (13) The specifications shall require compliance with § 208.009 RSMo.
  - (14) For construction projects over \$2,000 using federal funds, a statement that contractors will be provided with a copy of the most current wage determination (from the DOL website at <http://www.wdol.gov/dba.aspx>) and must comply with the Davis Bacon Act.
  - (15) A statement that the City reserves the right at its sole discretion to reject any and all bids, wholly or in part, to waive any informalities or any irregularities therein, to accept any bid even though it may not be the lowest bid, to call for rebids, to negotiate with any bidder, and to make an award which in its sole and absolute judgment will best serve the City's interest. The City reserves the right to investigate the financial condition of any bidder to determine his or her ability to assure service throughout the term of the contract.
- c) The sealed bid process shall be initiated by the issuance of a Request for Bids prepared by the Board of Aldermen or its designee. Notice of the Request for Bids shall be made by letters to known providers soliciting bid responses, advertisements posted in three public locations within the City, and advertisements placed in a newspaper of general circulation in the region.
  - d) Notice defined. The notice required by the preceding section shall consist of the following:
    - (1) Notice inviting bids shall be published once in at least one official newspaper of the City at least five days preceding the last day set for the receipt of proposals. The newspaper notice required herein shall include a general description of the articles to be purchased or sold, shall state where bid blanks and specifications may be secured, and the time and place for opening bids.
    - (2) The purchasing agent also shall solicit sealed bids from all responsible prospective suppliers who have requested their names be added to a "Bidders' List," which the purchasing agent shall maintain, by sending them a copy of such newspaper notice or such other notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders' list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.
    - (3) The City clerk also shall advertise all pending purchases or sales by a notice posted on the public bulletin board in the City Hall.
    - (4) The City clerk also shall solicit sealed bids by direct mail request to prospective vendors and by telephone as may seem to be in the best interest of the city.
  - e) Once a Request for Bids has been issued, the bid specifications will be available for inspection at the City office.
  - f) **BID SUBMISSION.**
    - (1) All bids must be submitted in sealed envelopes, addressed to the City in care of the Purchasing Agent, and plainly marked with the name of the bid and the time of the bid opening. Bid proposals will be date stamped on the outside of the envelope immediately upon receipt. Any bid may be withdrawn in writing prior to the scheduled time for the

opening of bids. Any bids received after the time and date specified shall not be considered and shall be returned to the bidder unopened.

- (2) Bidders shall bid to the specifications and any exceptions must be noted by the bidder. A bidder submitting a bid thereby certifies that the bid is made in good faith without fraud, collusion, or connection of any kind with any other bidder for the same work and that the bidder is competing solely on his/her behalf without connection with or obligation to any undisclosed person or firm.

g) **BID OPENING.**

- (1) Every bid received prior to the bid submission deadline will be publicly opened and read aloud by the Purchasing Agent. The bid opening will include the name and address of bidder; for lump-sum contracts, the lump sum base bid and the bid for each alternate; for unit price contracts, the unit price for each item and the total, if stated; and the nature and the amount of security furnished with the bid if required.

- (2) When possible, the bid opening shall be held prior to the selection of the successful bidder. The Purchasing Agent shall tabulate the bids for presentation to the Board of Aldermen.

h) **CRITERIA FOR BID SELECTION.**

- (1) In evaluating bids for projects, the Board of Aldermen will consider the following criteria:

- (2) Price.

- (3) Bidder's ability to perform within the specified time limits.

- (4) Bidder's experience and reputation, including past performance for the City.

- (5) Quality of the materials and services specified in the bid.

- (6) Bidder's ability to meet other terms and conditions, including insurance and bond requirements.

- (7) Bidder's financial responsibility.

- (8) Bidder's availability to provide future service, maintenance, and support.

- (9) Nature and size of the bidder.

- (10) Contract provisions that are acceptable to the City.

- (11) For construction projects over \$2,000, the contractor's indication of acceptance of wages in the current wage determination is provided as part of the Request for Bids.

- (12) Any other factors that the Board of Aldermen determines are relevant and appropriate in connection with a given project or service.

i) **CHANGE ORDERS.**

- (1) If specification changes are made prior to the close of the bid process, the Request for Bids will be amended and notice shall be sent to any bidder who already submitted a bid and a new bid process will be initiated. Once a bid has been accepted, if changes to the specifications become necessary, the Board of Aldermen will prepare a change order specifying the scope of the change. Once approved, the contractor and an authorized agent of the City must sign the change order.

j) **LOWEST RESPONSIBLE BIDDER.**

- (1) The City reserves in all cases the right to reject any or all bids.

- (2) Bids shall not be accepted from, nor contract awarded to, a contractor who is in default on the payment of taxes, licenses, or other monies due to the city.

k) **JUSTIFICATION OF AWARD.**

- (1) When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be entered into the journal of the board.

l) **OTHER APPLICABLE REQUIREMENTS**

- (1) When state or federal laws or regulations applicable to a specific require additional or different bidding procedures, those procedures will take precedence over any of the provisions of this Section or shall be added to the bidding process as appropriate.

## Section 135.230 Protest Procedures

- a) Settlements of Issues Arising Out of Procurements 2 C.F.R. §200.318(k) – The City alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.
- b) Protests must be filed within seven (7) calendar days from the date notice of intent to award is issued. Failure to timely file a protest shall constitute a waiver of any right to protest. Untimely protests will not be accepted or considered. Any protest shall:
  - (1) State in detail each and every ground asserted for the protest, citing to the law, rule, local ordinance, procedure or bid provision on which the protest is based; and
  - (2) Identify the remedy sought.
- c) Note: Specification related protests must be fully supported by technical data, test results, or other pertinent information that a rejected product or service offered is equal to or better than the specification requirement
- d) Protest Resolution Process
  - (1) Informal resolution
    - i. After receiving a protest, the City Attorney, as applicable, will contact the protesting party at the earliest convenience to seek informal resolution and/or to clarify the issues.
  - (2) Written response
    - i. Within fourteen (14) calendar days following contact with the protesting party for informal resolution, the City shall provide a written response to the protesting party. The letter constitutes the applicable department's final decision on the protest and shall be considered the City's agency action.
- e) Nothing in this Section shall be deemed to prevent the City from proceeding with negotiations or awarding a purchase order or contract while a protest is pending.

## Section 135.240 Code of Conduct for Personnel Involved in Purchasing

- a) Employees, officers, and agents of the City who are involved in the procurement and selection of bids and purchases shall make reasonable efforts to avoid real, apparent, or potential conflicts of interest.
- b) No employee, officer, or agent of the City shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved.
- c) Such a conflict would arise when:
  - (1) an employee, officer, or agent of the City participates in the selection process and a vendor employs or is about to employ, any member of his or her immediate family, his or her partner, or
  - (2) an employee, officer, or agent of the City, or a member of his or her immediate family, or his or her partner, stands to receive anything of financial value if a vendor is selected.
- d) No officer or employee of the City shall transact any business in his official capacity with any business entity of which he is an officer, agent, or member or in which he owns a substantial interest; nor shall he or she make, any personal investments in any enterprise that will create a substantial conflict between his or her private interest and the public interest; nor shall he, she, or any firm or business entity of which he or she is an officer, agent or member, or the owner of substantial interest, sell any goods or services to the City except where such sale is done by competitive bidding and the officer or employee is the lowest bidder. For the purpose of this section, the term "investments" shall not include any publicly traded stock or other investment vehicle regulated by the Securities and Exchange Commission.

- e) An employee, officer, or agent of the City who is involved in the procurement and selection of a bid or purchase and has a real or apparent conflict of interest must disclose that conflict of interest to the Chairperson before the bid selection or purchase takes place. Such disclosure must be in writing and shall be retained as part of the official record surrounding the bid or purchase.
- f) Officers, employees, and agents of the City will not solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. For the purposes of this section, a gratuity shall include any amount of cash, or a gift having a value of more than twenty-five dollars. Non-cash gifts made to an entire department or to the City as a whole with a value of less than one hundred dollars shall not be considered a gratuity.
- g) Officers, employees, and agents who fail to follow the above Code of Conduct shall be sanctioned or disciplined, to the extent permitted by law, for violations of the above standards.
- h) Any person who violates the provisions of this Section shall, upon conviction thereof, be punished as provided in the City Code.

**SECTION 2.** That the provisions of this Ordinance be severable and if any provision hereof is declared invalid, unconstitutional, or unenforceable, such determination shall not affect the validity of the remainder of this ordinance.

**SECTION 3.** That this Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen, signed by the Mayor, and shall remain in effect until amended or repealed by the Board of Aldermen.

**SECTION 4.** Any ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent they conflict.

**Read two times by title only and adopted by the Board of Aldermen of the City of Appleton City, Missouri, this 13th day of February, 2024.**

\_\_\_\_\_  
Tom Holt, Mayor

*ATTEST:*

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Carrie Emerson, City Clerk

**APPROVED this 13th day of February, 2024.**

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Tom Holt, Mayor

*ATTEST:*

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Carrie Emerson, City Clerk