



City of Independence Procurement Policy

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City of Independence Procurement Policy

1) Introduction

The City of Independence is a public agency that is required to establish and follow formal procurement rules established in the City Charter and City Code. The primary purpose of the procurement policy is to ensure that all publicly funded acquisitions are obtained through an open and competitive process and that honest and ethical procedures are consistently followed to attain best value, cost, and quality. Department heads are entrusted with the responsibility of implementing and enforcing the policy within their departments. A procedures manual is maintained and training is offered to all users.

2) Applicable Law

Missouri Contracting Statute RSMo., Section 432.070 states, in essence, that any contract made by the City will be valid and effective only if the contract is executed before any performance or payment; within the scope of the City's authority; in writing; dated when made; and subscribed by the parties or their agents. General Law states unless displaced by the particular provisions of this manual, the principles of law and equity, including the Missouri Uniform Commercial Code, the law merchant, and law relative to capacity of contract, agency, fraud misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this policy.

3) Solicitation Thresholds

\$0 - \$5,000 – Competition not required but strongly recommended
\$5,000.01 - \$100,000 – Informal
\$100,000.01 and above – Formal

Professional Services:

\$0 - \$100,000 – Competition not required but strongly recommended
\$100,000.01 and above – competition required

4) Approvals

- A) City Council approval is required for all purchases, change orders, contracts, cooperative purchases over \$50,000
- B) Consent Agenda – Purchases where funds are to be expended; one reading
- C) Ordinance – Purchases that require appropriation or re-appropriation of funds; two readings
- ~~D) – The City Manager will provide a report of purchases between \$50,000 and \$100,000 to the City Council as requested~~

5) Solicitation Types Used by the City of Independence

- A) Invitation to Bid (ITB)
 - 1. Informal - Under \$100,000 – no public opening; written bids must be solicited
 - 2. Formal - \$100,000.01 and above – public bid opening required
 - 3. Award is made to the lowest most responsive and responsible bidder who meets the minimum requirements and conditions
 - 4. No negotiation is permitted; the Procurement Manager may consider exceptions if a single bid is received
 - 5. Exceptions to the terms and conditions of the ITB will not be considered
 - 6. Unit price prevails in the event of pricing discrepancy
- B) Request for Proposal (RFP)
 - 1. No public opening to preserve confidentiality until award or notice of intent to award is made
 - 2. The purpose is to award to the supplier that is able to provide the best value to the City, not necessarily lowest price, using weighted numerical scoring
 - 3. Negotiation is permitted

4. An evaluation team, ideally comprised of three to five members, evaluates using criteria disclosed in the RFP
 5. Evaluation team members are required to sign a Statement of Confidentiality and Non-Conflict of Interest and Substantial Interests to serve on the team. A breach of confidentiality or conflict of interest or substantial interest is defined as any evaluation team member, whether position or financial interest, that would affect either the solicitation of proposals or the selection of the successful proposer. The statement ensures the confidentiality and integrity of the RFP process for each specific procurement
- C) Request for Qualifications (RFQ)
1. Used to prequalify vendors for services prior to contract negotiation
 2. Respondents must satisfy the minimum RFQ criteria requirements to be prequalified
 3. Architects, Engineers, and Land Surveyors (A&E) – Missouri State Statute RSMo. 8.289 requires the RFQ process be used for prequalification prior to contract negotiation
- D) Request for Information (RFI)
- Used to gather information for an upcoming solicitation and scope of work, specifications, cost, or other information is unknown; no award is made
- E) The rationale for the solicitation type selected will be included in the procurement file.
1. In solicitation where evaluations are required, evaluations will be retained in the bid file.
- F) Bid, Proposal, and Response Submission Conditions
1. Competitive solicitations issued online shall require responses to be submitted online
 2. Responses received late will be rejected; online system time is official time
 3. Bids, proposals, or responses may be withdrawn, modified, or revised prior to close of the solicitation
 4. Bids, proposals, or responses cannot be revised after they are opened; once opened, all documents become property of the City
 5. Non-responsive:
 - a. Any bid submitted that does not meet the minimum requirements set forth in the ITB including Terms and Conditions will be deemed non-responsive
 - b. Any proposal or response that does not meet the minimum requirements set forth in the RFP, RFQ, or RFI will be deemed non-responsive
 6. Conflicts of interest, known and unknown, between the City and vendor is a condition where the administration of award will not be given to the vendor, regardless of solicitation type.

6) Management Analyst Review

Prior to presentation to Council, the City Management Analyst must review and make a recommendation for contracts where the cost is between \$500,000 and \$1,999,000, if they will be in effect for more than a year; and all contracts valued at \$2,000,000 or more regardless of term

7) Bonds

- A) Bid Bond or Proposal Bond – Security requirement determined by the Procurement Manager
1. Bid Bond or Proposal Bond - provided by a surety company authorized to do business in the State of Missouri
 2. Cashier's Check or Certified Check may be submitted in lieu of the bond; cash is not accepted
 3. Failure to submit a bond as required in the solicitation will result in rejection of the bid or proposal
 4. If the bidder or proposer fails to honor the bid or proposal for any reason, the security may be retained by the City
 5. Value of security is equivalent to 5% of the bid or proposal price
- B) Payment, Performance, and Maintenance Bond – Required as determined by the Procurement Manager
1. Provided by a surety company authorized to do business in the State of Missouri
 2. Issued in an amount up to 100% of the price specified in the bid or proposal
 3. The City's preapproved form shall be used or the bond will not be accepted

8) Public Improvements

- A) Public improvements are defined as new construction of public facilities, roadways, bridges, sidewalks, parking lots, etc. or newly constructed appurtenances for public use or benefit, paid wholly or in part out of public funds, in accordance with Article 11 of the City Charter conditions:
 - 1. All public improvements over \$500 require competitive bids
 - 2. A 100% payment, performance, and maintenance bond is required for all projects over \$2,500
 - 3. All public improvement projects will be completed in compliance with the Missouri Prevailing Wage Law
 - 4. Public Improvements are bid in accordance with the bidding procedures as defined in this policy as well as Chapter 20 of the City Code

9) Project Delivery Methods

Departments requiring construction for the City should collaborate with the Public Works Department to determine the most appropriate method

- A) Design-Bid-Build consists of three steps: a design phase provided by a prequalified A&E provider, the bid step, and the construction step provided a contractor independent of the A&E provider
- B) Design-Build is any project for the design, construction, alteration, remodeling or improvement of any buildings, facilities or other public improvements for which the design and construction services are furnished under one contract
- C) Construction Manager at Risk means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for the construction, rehabilitation, alteration, or repair of a project at the contracted price as a general contractor and provides consultation to a political subdivision regarding construction during and after the design of the project

10) Construction Contractor Qualifications Requirements – Contracts Exceeding \$300,000

Each solicitation shall include a statement that reflects the preferences and vendor qualification provisions set out in Section 8.06.003 of the City Code

11) Easement Acquisitions

Notwithstanding anything to the contrary found in existing ordinances and resolutions of the City, the City Council may authorize the City Manager or designee to accept or approve, on behalf of the City, all easement documents, deeds of dedication, contract work orders and utility relocation and right-of-way certifications and agreements

12) Preferences

Section 8.06.003 (E) of the City Code includes provisions for preferences. These preferences must be followed when procuring manufactured goods or commodities as well as when entering into any contract that exceeds \$300,000 involving labor

- A) United States Products. Manufactured goods or commodities shall be purchased which have been manufactured, assembled, or produced in the United States, unless:
 - 1. The purchase, lease, or contract involves an expenditure of less than \$5,000
 - 2. Only one component of a particular good or product is manufactured, assembled, or produced in the United States
 - 3. The specified products are not manufactured, assembled or produced in the United States in sufficient quantities to meet the City's requirements or cannot be manufactured, assembled, or produced in the United States within the necessary time in sufficient quantities to meet the City's requirements; or
 - 4. Obtaining the specified products manufactured, assembled or produced in the United States would increase the contract cost by more than ten percent (10%)
- B) Missouri Products. Materials, products, supplies, provisions and other needed articles shall be purchased which are produced, manufactured, compounded, made or grown within the State of Missouri, when they are found in marketable quantities in the State and are of a quality suited to the purpose intended and can be secured without additional cost over products of other states; provided, however, that quality and fitness of articles shall be considered in procuring or letting contracts for articles herein mentioned

- C) When entering into any contract which exceeds \$300,000 involving labor or hiring any labor for public contract work, preference may be given to contractors, mechanics, artisans or other laborers of any class, who shall have actually resided in Jackson County for a period of six months preceding the start of their engagement
 - 1. A contract or purchase may be awarded to a bidder utilizing local labor where the bid by such bidder is, in all material respects, comparable to the lowest responsible bid not utilizing local labor if the amount bid (labor, materials, and other services) by such bidder does not exceed the lowest bid not utilizing local labor by more than the following percentage, unless such an award is contrary to State or Federal law or regulation, or unless the Council, at its discretion, determines prior to giving notice soliciting bids that the provisions of this section shall not apply to the contract or purchases:
 - a. \$0 to \$300,000 – No preference
 - b. \$300,000 to \$1,000,000 – 5 percent on the first \$300,000 and adjustment for the amount between \$300,000 and \$1,000,000
 - c. \$1,000,000 and greater – 5 percent higher on the first \$300,000 and 2.5 percent on amount between \$300,000 and \$1,000,000
 - d. No additional adjustments for amounts in excess of \$1,000,000
 - 2. The amount of any preference awarded will be based on the maximum preference awarded for size of the contract multiplied by the percentage of local labor compared to the total labor for the work
- D) Licensed businesses operating from a physical address in six (6) months within the City of Independence when quality, service and other terms of the purchases are equal to or better than the low bid shall be given a preference of ten percent (10%) over the low bid, provided that the difference between the low bid and the local bid does not exceed thirty thousand dollars (\$30,000.00) maximum.

13) Exceptions to Competition Requirements

- A) Sole Source is defined as only one vendor that possesses the unique and singularly available capability to meet the requirement of the procurement; written justification from the manufacturer or service provider is required
- B) Single Source is a commodity or service that is proprietary or standardized by the City; written justification is required
- C) Cooperative Purchases are commodities or services purchased through contracts established by a government procurement entity or cooperative pursuant to RSMo.70.220, or generally accepted governmental procurement practices through the competitive bidding process
- D) Any purchase in which the City Manager determines that a waiver is in the best interest of the City and not in violation of federal, state, or local law
- E) Public Art to adorn public buildings and property in the City of Independence, an amount equal to 1% of the estimated cost of construction, reconstruction, or remodeling of a Municipal building pursuant to City Resolution Bill No. 17-746

14) Grants and Federal Funding

Purchases made with grant funds or federal funding must follow the guidelines of the grant as well as the Procurement Policy, City Code, and City Charter where applicable. Purchases made with the assistance of federal funding will also require the contracting firm to provide documentation the firm is not suspended or debarred from transactions as recorded by the System Award Management (SAM) Exclusions database at <https://www.sam.gov/SAM/>. Recognition that the firm to be awarded is not on the exclusion list will be a condition for being granted an award.

The City will adhere to all provisions as a sub-recipient of the state, Federal Regulations §§200.318 General procurement standards through 200.326 Contract provisions. The City will also include verbiage in solicitations that sub-recipients will also be subject to Federal regulation 2 CFR 200.330, and will also be will be responsible for adherence to applicable Federal program requirements specified in the Federal award.

The methods of procurement acceptable under Federal regulation 2 CFR 200.320 are:

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§ 200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

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

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

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

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

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

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

Solicitation using federal funding will contain clear and accurate descriptions of the technical requirements of the material, product or service. When not practicable or economical, a brand name or equivalent can be used to describe the performance or other requirements.

15) Sustainable Purchasing

It is the general policy of the City to support the purchase of products that will minimize negative environmental, health, and social impacts of City operations and support markets for sustainably-produced products. Consideration of the full life cycle cost of a good or service is encouraged. Purchase of these products is preferred whenever they perform satisfactorily and are available at a reasonable price.

16) Technology Purchasing

Technology solutions present unique risks that must be managed appropriately to ensure security, quality, and interoperability while managing overall technology spend. The Technology Services Division owns managing risks associated with all City technology and must provide review and approval prior to all technology purchases.

17) Term and Supply Contracts

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Generally issued for more than one year, term and supply contracts are established by the Procurement Division through competitive solicitations to eliminate recurring and redundant solicitation and to take advantage of economies of scale

1718 Change Orders

- A) Used to delete, substitute, or add items or services and to increase or decrease pricing
- B) All changes must be authorized by the Procurement Manager prior to vendor notification
- C) Change orders that exceed \$50,000 or the amount allowed for change already approved by City Council require additional City Council approval

1819 Emergency Purchases

An emergency purchase is made to alleviate a situation in which there is a threat to health, welfare, or safety, where time does not allow time for normal procurement procedures. Some examples are:

- A) The operation of the department would be seriously hampered
- B) The protection or preservation of public property would not be possible by following normal procedures
- C) Normal bidding procedures are not required but the department is encouraged to solicit three quotes when possible
- D) Department directors are responsible for determining an emergency purchase situation

1920 Signature Authority

- A) City Manager or designee has the authority to sign contracts
- B) Procurement Manager or designee as delegated by the City Manager
- C) Finance and Administration Director or designee as delegated by the City Manager

2021 Right of Protest

- A) The Procurement Manager, or appointed designee, will accept written protests regarding the solicitation of any goods, services or commodities, with a dollar value of \$50,000 or less, within five (5) business days of the bid opening. For purchases over \$50,000, a Notice of Intent to Award will be posted on the City's e-solicitation website. Any protest must be filed within five (5) business days of the date of posting of the Notice. Neither the City nor the e-solicitation website provider shall be responsible for directly notifying bidders of the Notice of Intent to Award
- B) Protests must be received in the office of the Procurement Manager and must contain the following information:
 - 1. Company name, address, phone number and signature of the authorized representative
 - 2. Solicitation number
 - 3. Detailed statement describing the grounds for the protest
 - 4. Supporting evidence or documents to substantiate the claim
- C) The Director of Finance and Administration will review the information provided and he/she or designee will issue a written decision within five (5) business days of receipt of the protest; this decision shall be final

2122 Procurement Cards (P-card)

The mandated method of payment for the City. The P-card should be used whenever possible as the first and primary choice for payment of any purchase or invoice, as long as processing fees are not added that may increase the total price of the purchase

2223 Vendor Self Service (VSS)

To do business with the City, all vendors must set up an account in the financial system through the VSS portal at URL <https://independencemo.munisselfservice.com>. All purchase orders, contracts, and other supporting documents are filed in the financial system for the vendor so access.

2324 Surplus, Scrap, Obsolete Property

Property purchased with City funds that is no longer functional in its current role that requires redistribution, disposal, or scrapping

- A) Non-Fleet Surplus – The Procurement Division will evaluate non-fleet surplus and determine method of disposition
- B) Fleet Surplus – Departments shall work through the Public Works Department to determine changes in fleet assets
 - 1. The Public Works Department will determine the value of fleet surplus for transfer to another department
 - 2. Fleet surplus that is not transferred to another department shall be surrendered to the Procurement Division for disposal
- C) Donation – Surplus may be donated to a not-for-profit, government agency, or utility that makes a written request for specific surplus goods
- D) Trade-in – surplus assets may be traded in on new assets
- E) Service weapons – Retiring Police officers may purchase their service weapon with a letter of recommendation from Police command staff

2425) Ethics

The Procurement Division subscribes to the Code of Ethics of the NIGP-The Institute for Public Procurement and believes that the following ethical principles should govern the conduct of every person employed by a public sector procurement or materials management organization.

- A) Seeks or accepts a position as head (or employee) only when fully in accord with the professional principles applicable thereto and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization
- B) Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant
- C) Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served
- D) Believes that personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable
- E) Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved
- F) Believes that members of the Institute and its staff should at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions
- G) Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts
- H) Resists encroachment on control of personnel in order to preserve integrity as a professional manager
- I) Handles all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on the basis of politics, religion, color, national origin, disability, gender, age, pregnancy and other protected characteristics
- J) Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically, without discrimination
- K) Subscribes to and supports the professional aims and objectives of NIGP-The Institute for Public Procurement

Appendix A – City of Independence Charter

Section 3.35	Division of Purchases: City purchasing agent, powers, and duties.
Section 5.3	Conflict of interests.
Section 8.11	Contracts and expenditures prohibited, when.
Section 11.6	Public improvements to be made by contract or by the City government—awarding contracts

Section 3.35. Division of purchases: City purchasing agent, powers, and duties. There shall be within the department of finance a division of purchases, the head of which shall be the city purchasing agent. The purchasing agent shall have power and shall be required, subject to any regulations which the council may provide, to:

- (1) Establish and enforce specifications for supplies, materials, and equipment to be procured for the city government;
- (2) Contract for, purchase, or issue purchase authorizations for all supplies, materials, equipment, contractual labor, and services and insurance for the departments, offices, and agencies of the city government; provided that, before the purchase of or contract for any supplies, materials, equipment, contractual labor and services, or insurance, ample opportunity for competitive bidding, under such regulations and with such exceptions as the council may provide, shall be given; but the council shall not accept an individual contract or purchase from the requirement of competitive bidding;
- (3) Inspect or supervise the inspection of all supplies, materials, and equipment delivered; and determine or supervise the determination of their quality, quantity, and conformance with specifications;
- (4) Have charge of such general storerooms and warehouses as may be established;
- (5) Transfer to or between departments, offices, and agencies, or sell surplus, obsolete, or unused supplies, materials, and equipment.

Section 5.3. Conflict of interests. Councilmembers, board members, and employees shall not place themselves in a position which may substantially conflict with their official duties or which may be a substantial influence to act other than in the best interests of the public since they owe an undivided loyalty to the public they serve. By way of illustration, and not limitation, the following shall be deemed to constitute conflict of interests:

- (1) No councilmember, board member, or employee shall transact any business in his/her official capacity with any business entity of which he/she is an officer, agent, or member or in which he/she owns a substantial interest; nor shall he/she make any personal investments in any business entity which will create a substantial conflict between his/her private interest and the public interest; nor shall he/she or any business entity of which he/she is an officer, agent, or member, or the owner of substantial interest, sell any goods or services to any business entity which is licensed by or regulated in any manner by the city when such sales shall constitute a substantial conflict.
- (2) No councilmember, board member, or employee shall appear in behalf of private interests before any officer, department, or agency of the city government where such appearance will create a substantial conflict between his/her private interest and the public interest.
- (3) No councilmember, board member, or employee shall enter into any private business transaction with any person or business entity that has a matter pending or to be pending upon which the councilmember, board member, or employee is or will be called upon to render a decision or pass judgment. If any councilmember, board member, or employee is already engaged in the business transaction at the time that a matter arises, he/she shall be disqualified from rendering any decision or passing any judgment upon the same.
- (4) After termination of service or employment, no person who has served as a councilmember, board member, or employee of the city shall, within such time period (whichever is longer) as may be provided by state law or city ordinance, appear before any agency of the city government or receive compensation for services rendered on behalf of any person or business entity, in relation to any case, proceeding, or application with respect to which the person was directly concerned, and in which he/she personally participated during the prior period of service or employment with the city. Notwithstanding, nothing herein contained shall be construed to prohibit any business entity, in which any councilmember, board member, or employee is a member, from appearing, rendering services in relation to any matter before, or transacting business with any agency of the city, where the councilmember, board member, or employee does not share in the profits resulting therefrom.
- (5) Councilmembers, board members, and employees who have a direct or indirect financial or other private interest in any proposed legislation and who participate in discussion before or give official opinion to the council, shall publicly disclose the nature and extent of such interest, and the disclosure shall be entered in the journal of the council.
- (6) No councilmember, board member, or employee in the course of his/her official duties shall represent private interests in any action or proceeding against the interests of the city, in any litigation to which the city is a party, or in any action or proceeding in the municipal court in which the city, any agency, councilmember, board member, or employee of the city in the course of his/her official duties is a complainant.
- (7) No councilmember, board member, or employee of the city shall accept any valuable gift, whether in the form of service, loan, thing, or promise, or in any other form, from any person or business entity, which, to his/her knowledge is interested directly or indirectly, in any manner whatsoever, in business dealings with the city.
- (8) No councilmember, board member, or employee shall disclose confidential information concerning the property, government or affairs of the city, nor shall he/she use such information to advance the financial or other private interest of himself/herself or others.
- (9) No councilmember, board member, or employee shall invest or hold any investment directly or indirectly in any financial, business, commercial, or other private transaction which creates a substantial conflict with his/her official duties.
- (10) No councilmember, board member, or employee shall engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of his/her official duties.
- (11) No councilmember, board member, or employee shall solicit, negotiate for, or promise to accept employment with any person or business entity with which he/she is engaged on behalf of the city in the transaction of business or which is or may be affected by his/her official action.
- (12) No person or business entity shall attempt, directly or indirectly, to secure preferential treatment in dealings with the city government by offering any valuable gift, whether in the form of service, loan, thing, or promise, or in any other form, to councilmembers, board members, or employees. If any person or business entity violates the foregoing provision, any current contracts which he/she or it may have with the city shall be cancelled; and such person or business entity shall not be eligible to bid on any city contracts for a period of two (2) years.

(13) No councilmember, nor the city manager, the director of finance, the city purchasing agent, or any other employee or board member whom the council may designate by ordinance or personnel rules, shall sell or barter anything to the city or to a contractor to be supplied to the city; or make any contract with the city; or purchase anything from the city other than those things which the city offers generally to the public (as for example, utility services), and then only on the same terms as are offered to the public. Any violation of this section, with the knowledge, express or implied, of the person or business entity contracting with the city, shall render the contract voidable by the city manager or the council. This paragraph shall not apply to the taking of property by condemnation proceedings.

Section 8.11. Contracts and expenditures prohibited, when. No department, officer, employee, or agency of the city government shall expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money, for any purpose, in excess of the amounts appropriated or authorized and available for that general classification of expenditure. Any contract made in violation of this charter shall be null and void. Any officer or employee of the city who shall violate this section shall be guilty of a misdemeanor, and upon conviction thereof, shall cease to hold the office or employment currently held by said officer or employee, effective at the expiration of the period during which said officer or employee may appeal or, in case of appeal, when the case is finally determined.

Nothing in this section shall prohibit the making of contracts or the spending of money for public improvements to be financed in whole or in part by the issuance of bonds after the issuance of said bonds has been duly authorized, or for public improvements to be financed in whole or in part by special assessments on benefited real property after said improvements have been duly authorized; nor the making of contracts of lease or for services for a period exceeding the fiscal year in which such contract is made, when such contract is not prohibited by applicable law or ordinance.

Section 11.6. Public improvements to be made by contract or by the city government—awarding contracts. Public improvements, regardless of the manner of paying for them, may be made by contract or by the city government itself, as the council may determine. At least in all cases in which the amount of the contract for a public improvement is more than five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500), formal or informal bids shall be taken; and in all cases in which the amount of the contract is more than two thousand five hundred dollars (\$2,500), the city shall advertise for bids therefor in such manner as the council may provide, and formal bids shall be taken. All bids may be rejected repeatedly, and the city may further advertise for bids. The contract may be awarded only to the lowest and best bidder. The council shall award all contracts for public improvements. If part or all of the cost of a public improvement is to be paid to the contractor in special tax bills or other evidences of special assessments, the contract shall specify the amount to be so paid, and the city shall not be liable therefor. At least in every case in which the amount of the contract exceeds two thousand five hundred dollars (\$2,500), the contractor shall provide a bond for the faithful performance of the contract including payment by the contractor for all labor done and materials used in the public improvement; and said bond shall be subject to approval by the council.

Appendix B – City Code of Ordinances

Section 8, Article 6, 001-007, 013-015
City Code, Indep., MO
ARTICLE 6. PURCHASES AND SALES

SEC. 8.06.001. "CONTRACTUAL LABOR AND SERVICES" DEFINED.

"Contractual labor and services," as used in this Article, shall mean labor and services performed for the City by persons not in the employment of the City, and may include the use of equipment or the furnishing of commodities in connection with said labor and services under express or implied contract. Contractual labor and services shall include transportation of personnel (travel); freight; express; parcel post; postage; repairs, alterations and maintenance of buildings, equipment, streets, and bridges, and other physical facilities of the City; provided that "contractual labor and services" as used in this Article shall not include contracts for public improvements referred to in Section 11.6 of the City Charter.

SEC. 8.06.002. PURCHASES - HOW MADE - REQUISITIONS - CERTIFICATION OF FUNDS.

All purchases of supplies, material, equipment, contractual labor, services, and insurance for the offices, departments, and agencies of the City government, shall be made in accordance with purchase authorizations issued by the City Procurement Manager who also may be called the City Purchasing Agent and either title may be used within this City Code, pursuant to Section 3.35 of the City Charter. Except as otherwise provided in Section 8.06.006, a purchase shall be made only when the head of the office, department, or agency whose appropriation is to be charged issues a written requisition therefore, and the Director of Finance or his/her authorized agent certifies that there is an unencumbered balance of funds appropriated or authorized and available therefore, as provided by Section 3.34 of the City Charter, and after said written requisition has been approved by the Director of Finance and said approval duly endorsed thereon.

SEC. 8.06.003. COMPETITIVE BIDDING.

Except as provided in Section 8.06.004, bids shall be obtained as set out below:

A. Commodities.

1. Formal. Before any purchases of, or contract for supplies, materials, equipment, contractual labor, wherein the consideration to be paid is estimated to be more than One Hundred Thousand Dollars (\$100,000), except as otherwise provided in Section 8.06.004 immediately below, the City Procurement Manager shall submit to at least three (3) persons, firms, or corporations dealing in and able to supply the same, or to a smaller number if there are not three (3) dealing in and able to supply the same, specifications and an invitation to bid, to give them an opportunity to bid. The bid shall be announced on the Public Notice Board in City Hall and as appropriate through Internet, print media or any other means of publicly making the solicitation known to potential bidders. All bids shall be sealed and shall be opened in public at a designated time and place, and bids shall be received up to the time designated for the opening of bids. The Procurement Manager may repeatedly reject all bids, and again may resubmit to the same or other persons, firms, or corporations and follow the procedures identified above. The Procurement Manager shall purchase from the bidder whose bid is more advantageous to the City, considering the price, quality, date of delivery, prior performance by the person, firm, or corporation or any of its sub-contractors or suppliers, specifically including any City contracts within the immediate past five years, and the preferences set out below. If the contract amount exceeds Fifty Thousand Dollars (\$50,000) it shall be reported to, and approved by the City Council prior to award.

2. Informal. Before any purchases of, or contract for supplies, materials, equipment, contractual labor, services, insurance or any sale of surplus, obsolete, or unused property is made, wherein the consideration to be paid is Fifty Thousand Dollars (\$50,000) or less, the City Procurement Manager shall obtain competitive bids by an informal method, including written, verbal, telephone, Internet, or fax quotations or any other method that establishes competition. The Procurement Manager may repeatedly reject all bids and again may resubmit to the same or other persons, firms or corporations. The purchase will be made from the bidder whose bid is most advantageous to the City considering the price, quality, date of delivery, prior performance by the person, firm, or corporation or any of its subcontractors or suppliers, specifically including any City contracts within the immediate past five years, the preferences set out below, and any other factors which deem it to be best bid. If the contract amount exceeds Fifty Thousand Dollars (\$50,000) it shall be reported to, and approved by, the Council prior to award. Council approval is not required for contracts under Fifty Thousand Dollars (\$50,000) or for the renewal of contracts, when the requested price increase does not exceed the renewal period increase established in the original agreement.

B. Professional Services. Businesses which require a State or Federal professional license or certification shall be considered professional services. The Procurement Manager will utilize Request for Proposals (RFPs) or Requests for Qualifications (RFQs) when procuring professional services where factors other than cost must be considered in the evaluation process. Examples include, but are not limited to, architects, engineers, insurance brokers and companies, and attorneys. RFP's and RFQs will be announced on the Public Notice Board in City Hall and as appropriate through the Internet, print media or any other means of publicly making the solicitation known to potential bidders or proposers. If the contract amount exceeds Fifty Thousand Dollars (\$50,000) it shall be reported to, and approved by, the City Council prior to award. Council approval is not required for contracts under Fifty Thousand Dollars (\$50,000) or for the renewal of contracts, when the requested price increase does not exceed the renewal period increase established in the original agreement.

C. Public Improvement Projects. Public Improvement projects shall be processed through the Procurement Division using the processes identified in section A1 and A2, and in conformance with procedures set out in chapter 20 of this City Code. If the contract amount exceeds Fifty Thousand Dollars (\$50,000) it shall be reported to, and approved by, the City Council prior to award.

D. Change Orders. For contracts up to Fifty Thousand Dollars (\$50,000) or ten percent (10%) of the original contract amount if in excess of Fifty Thousand Dollars (\$50,000), the City Manager is authorized to issue change orders.

E. Preferences. In awarding a bid, the Procurement Manager shall consider the following preferences:

1. United States Products. Manufactured goods or commodities shall be purchased which have been manufactured, assembled or produced in the United States, unless: (a) the purchase, lease or contract involves an expenditure of less than Five Thousand Dollars (\$5,000.00); (b) only one component of a particular good or product is manufactured, assembled or produced in the United States; (c) the specified products are not manufactured, assembled or produced in the United States in sufficient quantities to meet the City's requirements or cannot be manufactured, assembled or produced in the United States within the necessary time in sufficient quantities to meet the City's requirements; or (d) obtaining the specified products manufactured, assembled or produced in the United States would increase the contract by more than ten percent (10%).

2. Missouri Products. Materials, products, supplies, provisions and other needed articles shall be purchased which are produced, manufactured, compounded, made or grown within the State of Missouri, when they are found in marketable quantities in the State and are of a quality suited to the purpose intended and can be secured without additional cost over products of other states; provided, however, that quality and fitness of articles shall be considered in purchasing or letting contracts for articles herein mentioned.

3. When entering into any contract which exceeds \$300,000 involving labor or hiring any labor for public contract work, preference may be given to contractors, mechanics, artisans or other laborers of any class, who shall have actually resided in Jackson County for a period of six months preceding the start of their engagement.

a. A contract or purchase may be awarded to a bidder utilizing local labor where the bid by such bidder is, in all material respects, comparable to the lowest responsible bid not utilizing local labor if the amount bid (labor, materials, and other services) by such bidder does not exceed the lowest bid not utilizing local labor by more than the following percentages, unless such an award is contrary to State or Federal law or regulation or unless the Council, at its discretion, determines prior to giving notice soliciting bids that the provisions of this section shall not apply to the contract or purchases:

\$0 to \$300,000 – No preference

\$300,000 to \$1,000,000 - 5 percent on the first \$300,000 and no adjustment for the amount between \$300,000 and \$1,000,000

\$1,000,000 and greater - 5 percent higher on the first \$300,000 and 2.5 percent on amount between \$300,000 and \$1,000,000

No additional adjustment for amounts in excess of \$1,000,000

The amount of any preference awarded will be based on the maximum preference awarded for size of the contract multiplied by the percentage of local labor compared to the total labor for the work.

F. Contractor Qualifications:

All contractors bidding on construction contracts which exceed \$300,000.00 with the City of Independence shall meet qualification standards prior to acceptance of any contract. The City shall investigate and examine the qualifications of all contractors and, upon determining that a contractor meets the requirements of this policy and is in all respects responsible, qualified and competent for the class, character and magnitude of the work which the applicant proposes or intends to perform under this proposed contract shall then be determined to be qualified to be awarded a contract. In determining the acceptability of a contractor for the purpose of qualification, the City shall investigate and consider at least the following:

- Financial responsibility.
- The character, quality and availability of the contractor's equipment
- The performance record of the contractor in the performance of other contracts for public or private improvements.
- The nature and extent of other contract commitments involving the use of contractor's machinery, equipment and personnel.
- The reputation for reliability and integrity.
- History of compliance with applicable State and Federal laws.
- Compliance with MBE/WBE Policies.
- The source of any labor involved in the project.
- Any other fact which would materially affect the ability of the applicant to properly, adequately, expeditiously and satisfactorily perform such work as might be awarded to such contractor. To be determined qualified the contractor must provide or participate in each of the following for the benefit of its employees and in addition, the contractor will certify that all subcontractors under their control will comply with the following:

1. An ERISA-qualified medical welfare benefit plan or health insurance in some form.

2. A training program approved by and registered with the U.S. Department of Labor's Bureau of Apprenticeship and Training or equivalent.

3. An ERISA-qualified pension plan or a retirement benefit program

Under no circumstances shall a contractor be qualified who fails to provide or participate in any of the aforementioned programs. The City Manager may require such documentation or verification by the person or firm claiming to be using local labor as is deemed necessary to establish the requirements.

SEC. 8.06.004. WHEN COMPETITIVE BIDDING IS NOT REQUIRED.

In the following cases, competitive bidding shall not be required if, in the judgment of the Procurement Manager, a lower price cannot be obtained by requiring competitive bids:

1. Where the cost of supplies, materials, equipment, contractual labor, services, or insurance does not exceed Five Thousand Dollars (\$5,000).

2. Where there is only a sole source that possesses the unique and singularly available capability to meet the requirement of the procurement as determined by the Procurement Manager; or a single source that is proprietary to existing commodities, equipment, or services as determined by the Procurement Manager.

3. Where supplies, materials, equipment, contractual labor, services, or insurance purchases from another unit of government at a price deemed below that obtainable from private dealers, including war surplus.

4. Where supplies, materials, equipment, contractual labor, insurance and services are purchased through bids established by a government purchasing entity or cooperative. The cooperative bids used will have been established pursuant to RSMo.70.220 or generally accepted governmental purchasing practices through the competitive bidding process. Purchases by this method shall be exempt from Section 8.06.003 of the City Code. If the contract amount exceeds One Hundred Thousand Dollars (\$100,000) it shall be reported to, and approved by, the City Council prior to award.

SEC. 8.06.005. PROHIBITION AGAINST SPLITTING CONTRACTS.

The splitting or dividing of contracts and purchases for the purpose of evading requirements of Section 8.06.003 of this Article shall not be permitted, and any such contracts or purchases so made evidencing such purpose shall be void.

SEC. 8.06.006. EMERGENCY PURCHASES.

The City Manager or a delegated representative may declare an emergency regarding the purchase of appropriated supplies, materials, equipment, contractual labor, services, or insurance, and the same may be purchased without compliance with the requirements of Section 8.06.002, Section 8.06.003 or Section 8.06.004 above when deemed important to public life, health, welfare, or safety of the City. Purchase of

appropriated items in an amount in excess of Fifty Thousand Dollars (\$50,000) made under the provisions of this section shall be reported to the City Council at a formal Council meeting.

SEC. 8.06.007. TRANSFER AND SALE OF CITY PROPERTY.

The City Procurement Manager may sell, trade-in, junk, donate, or otherwise dispose of surplus, obsolete, or unused property, or transfer the same from one office, department, or agency of the City to another upon the written approval of the directors of the offices, departments, or agencies concerned, and upon written approval of the Finance Director and City Manager or their designated representative. Transfers of property between departments will require proper reallocation of funds by the Finance Department.

1. Sales under this section shall be made to the highest responsible bidder at public auction or in conformance with Section 8.06.003 or Section 8.06.004 hereof, as applicable. Sales may be made to other units of government or public utilities without adherence to bidding requirements.

SEC. 8.06.013. AFFIDAVITS TO BE FILED.

All persons, firms, and corporations furnishing materials of any kind or character, including, but not limited to, supplies, materials, equipment, contractual labor and services, and insurance to the City, and contractors furnishing materials or doing public work for the City, shall be required to file written affidavits stating that no elected or appointed officer is financially interested, directly or indirectly, in the sale or purchase of said supplies, materials, equipment, contractual labor and services, and insurance required by the City.

SEC. 8.06.014. PENALTY FOR FALSE AFFIDAVIT, ETC.

Every person, firm, or corporation engaged in the business set out in Section 8.06.012 who shall make a false affidavit as to the interest of such elected or appointed officer of the City, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00), and any contract or agreement made or entered into in violation of this Article shall be terminated by the City, and the person so offending shall be held liable for any damage sustained by the City by reason of the termination of said contract or agreement.

SEC. 8.06.015. OCCUPATION LICENSE CHECKED.

A. The Procurement Manager will be provided with a current listing of licensed businesses on a monthly basis and will notify the Licensing Division of any business requiring an Independence occupation license that has otherwise met the requirement for bid award, and does not appear to be licensed.

B. Bids will be awarded to those businesses required to be licensed to do business in Independence under provisions of Chapter 5 of this City Code only after they have properly secured an occupation license.

Section 20, Article 17

City Code, Indep, MO

ARTICLE 17. BIDS ON PUBLIC WORKS PROJECTS

SEC. 20.17.001. ADVERTISEMENT AND NOTIFICATION

A. The Invitation to Bid will be published on the City's website.

B. The Invitation to Bid will be submitted to a public works publication house in the metro area and the full set of specifications and plans will be made available to them if they have a means of displaying for the use of prospective contractors. Bidders will pay to the public works publication house any fee established for providing the Invitation to Bid, Plans, and Specifications.

C. The Invitation to Bid notice will be sent by electronic mail to all contractors known to have an interest in a project of this type.

D. The City will adhere to all superseding federal, state, and local laws, ordinances, and other requirements regarding advertisement and notification, where applicable.

SEC. 20.17.002. PREFERENCES.

Each Invitation to Bid shall include a statement that reflects the preferences and vendor qualification provisions set out in Section 8.06.003 of the City Code.

SEC. 20.17.003. WHERE BIDS TO BE DEPOSITED.

Bidders will be required to submit their sealed bids on a public improvements project to the Procurement Manager at the time and under the conditions prescribed in the Invitation to Bid.

SEC. 20.17.004. BID OPENING PROCEDURE.

Bids shall be opened at the prescribed time and location as specified in the Invitation to Bid and said bid opening shall be open to the public. All bids shall be read aloud and a bid tabulation shall be prepared. A copy of the bid tabulation shall be provided to any bidder upon request. All bids received at or prior to the stated bid opening time will be opened. All bids received after the stated bid opening time will be returned unopened, when feasible.

SEC. 20.17.005 DEBARMENT OR SUSPENSION.

Except to the extent prohibited by law, persons who are debarred or suspended by the City or the State of Missouri shall be excluded from bidding, and shall not be awarded contracts for public works for the City of Independence, in accordance with the provisions of Chapter 8 of the City Code.